

# **EXHIBIT 2**

**In The Matter Of:**  
*Securities and Exchange Commission v.*  
*Revelation Capital Management, Ltd., et al.*

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*Guy F. Erb*  
*July 23, 2015*

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*Behmke Reporting and Video Services, Inc.*  
*160 Spear Street, Suite 300*  
*San Francisco, California 94103*  
*(415) 597-5600*

Page 1

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 - - - - -  
4 SECURITIES AND EXCHANGE COMMISSION, )  
5 Plaintiff, )  
6 v. ) Civil Action No.  
7 REVELATION CAPITAL MANAGEMENT, ) 14-cv-0645  
8 LTD. and CHRISTOPHER P.C. KUCHANNY, )  
9 Defendants. )  
10 - - - - -  
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13  
14 VIDEOTAPED DEPOSITION OF GUY F. ERB  
15 THURSDAY, JULY 23, 2015  
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20  
21 BEHMKÉ REPORTING AND VIDEO SERVICES, INC.  
22 BY: MICHELE MOSKOWITZ  
23 160 SPEAR STREET, SUITE 300  
24 SAN FRANCISCO, CALIFORNIA 94105  
25 (415) 596-5600

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8 Videotaped deposition of GUY F. ERB, taken on  
9 behalf of Plaintiff, at Securities and Exchange  
10 Commission, 200 Vesey Street, New York, New York,  
11 commencing at 9:33 A.M., THURSDAY, JULY 23, 2015,  
12 before Michele Moskowitz, a Notary Public within  
13 and for the State of New York, pursuant to Notice  
14 of Videotaped Deposition.  
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1 APPEARANCES OF COUNSEL:  
2 FOR PLAINTIFF SECURITIES AND EXCHANGE COMMISSION  
3 UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
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10 FOR DEFENDANTS  
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15 One Battery Park Plaza  
16 New York, New York 10004  
17 Telephone: (212) 574-1507  
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19  
20 ALSO PRESENT:  
21 David Jiminez, Legal Video Operator  
22  
23  
24  
25

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1 INDEX  
2 THURSDAY, JULY 23, 2015  
3 GUY F. ERB  
4 Examination by MR. YOSKOWITZ  
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6 -oOo-  
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8 QUESTION WITNESS INSTRUCTED NOT TO ANSWER:  
9 PAGE LINE  
10 None.  
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Page 5			Page 7		
1	EXHIBITS		1	VIDEOTAPE OPERATOR:	The court reporter today
2	GUY F. ERB		2	is Michele Moskowitz,	certified shorthand reporter
3	Number	Description	3	with Behmke Reporting and Video Services, Inc.	
4	Exhibit 67	Expert report - 59 pages	4	Would the reporter please swear in the witness and	
5	Exhibit 68	Citation from Dictionary	5	we can proceed.	
6		of Financial Terms - 4 pages	6	THE COURT REPORTER:	Can you raise your
7			7	right hand, please? Do you solemnly swear	
8			8	that the testimony you're about to give will	
9	EXHIBITS PREVIOUSLY MARKED		9	be the truth, the whole truth, and nothing but	
10	Number	Description	10	the truth so help you God?	
11	Exhibit 9	Press release	11	THE WITNESS: I do.	
12	Exhibit 10	Selling memorandum	12	THE COURT REPORTER:	Please state your
13	Exhibit 19	Underwriting agreement	13	name for the record.	
14	Exhibit 38	Engagement letter	14	THE WITNESS: Guy F. Erb.	
15			15	THE COURT REPORTER:	Thank you.
16			16		
17			17	EXAMINATION	
18			18	BY MR. STODGHILL:	
19			19	Q. Good morning, Mr. Erb.	
20			20	A. Good morning.	
21			21	Q. As you heard, I'm Jack Yoskowitz, I	
22			22	represent the defendants.	
23			23	Have you ever been deposed before?	
24			24	A. Yes, I have.	
25			25	Q. How many times?	
Page 6			Page 8		
1	THURSDAY, JULY 23, 2015; 9:33 A.M.		1	A. I think this will be the fifth time.	
2	(Expert report of Guy Erb was marked Exhibit		2	Q. Okay. Great. Just so we have the	
3	67 for identification, as of this date.)		3	rules, some of them anyway, I'll let you finish	
4	VIDEOTAPE OPERATOR: Here begins DVD No. 1 in		4	your answer and hopefully you'll let me finish my	
5	the deposition of Mr. Guy F. Erb in the matter of		5	question. If you don't understand my question,	
6	United States Securities and Exchange Commission		6	please let me know and I'll try to rephrase it. If	
7	vs. Revelation Capital Management, Ltd, et al.		7	you need a break pretty much for any reason, let me	
8	It's in the United States District Court, Southern		8	know. If you need to consult with Mr. Stodghill,	
9	District of New York, Case No. 14 CV0645.		9	let me know.	
10	The date today is July 23, 2015, and the time		10	With that being said, can you just	
11	on the video monitor is 9:33 a.m.		11	briefly describe your educational background after	
12	The video operator today is David Jiminez with		12	high school?	
13	Behmke Reporting and Video Services, Inc., 160		13	A. After high school I attended the	
14	Spear Street, Suite 300, San Francisco, California.		14	University of California at Berkeley and then	
15	The video deposition is taking place at 200 Vesey		15	during my junior year I spent the year under the	
16	Street in New York, New York, and is noticed by		16	auspices of New York University at the -- at the	
17	Mr. Jack Yoskowitz of Seward & Kissel.		17	University of Madrid, receiving a diploma under	
18	Would counsel please voice identify yourselves		18	that, and then I came back to Berkeley and received	
19	and state whom you represent.		19	my undergraduate degree a year later. I then went	
20	MR. YOSKOWITZ: Jack Yoskowitz, Julia Tebor,		20	to the London School of Economics and took a	
21	and Ross Hooper from Seward & Kissel representing		21	master's degree in economics from the London	
22	the defendants.		22	School.	
23	MR. STODGHILL: And Charles Stodgill from the		23	Q. What -- what was your degree in from	
24	Securities and Exchange Commission representing the		24	Berkeley?	
25	plaintiff.		25	A. Economics.	

<p style="text-align: right;">Page 9</p> <p>1    <b>Q. And what kind of diploma did you get</b> 2    <b>from the University of Madrid?</b> 3    A. It's just a certification that I had 4    spent the year there. It was a full university 5    year. 6    <b>Q. Okay. When did you graduate from</b> 7    <b>London School of Economics?</b> 8    A. '65. 9    <b>Q. Okay. Have you done any postgraduate</b> 10   <b>work since then?</b> 11   A. No. 12   <b>Q. Okay. Do you have any other degrees or</b> 13   <b>certifications?</b> 14   A. No. 15   <b>Q. All right. Are you licensed by FINRA?</b> 16   A. Not anymore. 17   <b>Q. Okay. You were though at some point?</b> 18   A. Not by FINRA because it hadn't come 19   into being yet, but I was licensed by the NASD and 20   then the New York Stock Exchange. 21   <b>Q. What licenses did you have?</b> 22   A. Series 7 and Series 24. 23   <b>Q. And approximately when did you get</b> 24   <b>them?</b> 25   A. The 7 was in the late '80s, I think</p>	<p style="text-align: right;">Page 11</p> <p>1    A. A little over two years. For the last 2    year of the Carter Administration I was named the 3    deputy director of an independent agency known as 4    the U.S. International Development Cooperation 5    Agency. 6    <b>Q. What did you do after that?</b> 7    A. Then I founded a consulting firm when I 8    left the Government in 1981 and worked as a 9    corporate consultant on my own for a couple of 10   years, then formed a business known as Erb &amp; Madian 11   with a partner Alan Madian and with him I then 12   formed Lafayette Capital Corporation, which was the 13   vehicle that was supervised by the NASD, and then 14   after that I joined Goldman Sachs. 15   <b>Q. So what did you -- what -- what was the</b> 16   <b>business of Erb &amp; Madian?</b> 17   A. A corporate consulting, advisory work 18   related to for the most part foreign investments 19   and strategic decisions regarding those 20   investments. 21   <b>Q. Did you do any underwriting work when</b> 22   <b>you were at Erb &amp; Madian?</b> 23   A. No, it was not a licensed 24   broker-dealer. 25   <b>Q. Okay. And what about Lafayette</b></p>
<p style="text-align: right;">Page 10</p> <p>1    '87, the 24 was probably 88. 2    <b>Q. And how long did you hold them for?</b> 3    A. Until roughly 2000 -- after I left 4    Goldman I associated briefly with a broker-dealer 5    and that probably ran into 2001. 6    <b>Q. Okay. And I guess since you graduated</b> 7    <b>from the London School, can you take me through</b> 8    <b>your -- your job history in the finance services?</b> 9    A. Yes. After the London School I joined 10   the U.S. Foreign Service, spent roughly two years 11   with the State Department in Washington, and then I 12   left the Foreign Service and went to the United 13   Nations in New York, first of all working in the 14   United Nations Secretariat as an economics officer. 15   After four years there I went to 16   Geneva, still with the United Nations Conference on 17   Trade and Development, spent two years in Geneva 18   and then one year as a financial advisor in Central 19   America, following which I went back to Washington, 20   spent five years at the think tank known as the 21   Overseas Development Council, and from there I 22   joined the Whitehouse staff of President Carter 23   under the supervision of Dr. Brzezinski. 24   <b>Q. How long were you working at the</b> 25   <b>Whitehouse?</b></p>	<p style="text-align: right;">Page 12</p> <p>1    <b>Capital? What did you do at Lafayette Capital?</b> 2    A. That as an M&amp;A advisory firm and it was 3    registered by the NASD, but we were limiting our 4    activities to merger and acquisition development 5    and fostering transactions. 6    <b>Q. So who were the clients of Lafayette</b> 7    <b>Capital?</b> 8    A. Oh, well, we had, among other things, 9    Goldman Sachs, some Mexican companies, a couple -- 10   I think, I can't recall them all now, but they 11   would have been American or Mexican companies. 12   <b>Q. Okay. And did you do any underwriting</b> 13   <b>while you were there?</b> 14   A. Not there, no. 15   <b>Q. Okay. And what did you do after</b> 16   <b>Lafayette Capital?</b> 17   A. Then I joined Goldman Sachs. I had 18   been retained by Goldman during late 1989 and for 19   the bulk of 1990 I worked with Goldman teams on the 20   liberalization that was taking place in Mexico at 21   that time. 22   <b>Q. Okay. And -- and what were your duties</b> 23   <b>and responsibilities at Goldman Sachs?</b> 24   A. At Goldman I was the vice president in 25   the investment banking services. My</p>

<p style="text-align: right;">Page 13</p> <p>1 responsibilities largely related to the development 2 of investment banking business in Mexico. 3 <b>Q. What did you do to develop investment 4 banking business in Mexico?</b> 5 A. Well, this is a process of calling on 6 potential clients, working with a team from Goldman 7 to present the firm and its credentials, obtaining 8 the mandate if we were successful, and then joining 9 the team as they work through whatever transaction 10 we had been assigned to do, whether that was 11 underwriting a merger assignment, a valuation 12 assignment, whatever it happened to be. 13 <b>Q. How long were you in that role at 14 Goldman?</b> 15 A. Well, you could say that I was in that 16 role for the entire ten years that I worked at 17 Goldman, although my title changed halfway through 18 when I moved to Mexico and became the director of 19 the office but my -- in addition to managing the 20 office and reporting to Mexican authorities, my 21 responsibilities remained largely the same. 22 <b>Q. Okay. Is it -- is it fair to say that 23 while you were at Goldman your clients were Mexican 24 companies?</b> 25 A. Largely, but we also responded to</p>	<p style="text-align: right;">Page 15</p> <p>1 probably ten. 2 <b>Q. Okay. And how many were realized?</b> 3 A. Five or six of those. 4 <b>Q. Okay. And as I understand your career 5 prior to Goldman, you didn't work on underwritings 6 prior to joining Goldman, right?</b> 7 A. That's correct. I would add one thing, 8 I was thinking of equity offerings when I responded 9 to that question, but we also did debt offerings 10 and the number of underwritings would go over ten 11 in that case. 12 <b>Q. Okay. So you worked -- you worked 13 on -- in terms of realized equity underwritings, 14 you worked on about five?</b> 15 A. Five to seven. I think it's hard to 16 recall them all right now. 17 <b>Q. Okay. And to the best of your 18 recollection, all of those underwritings were for 19 Mexican companies that were listed on the New York 20 Stock Exchange?</b> 21 A. Yes. 22 <b>Q. And what was your role in the actual 23 underwriting process?</b> 24 A. I joined the teams -- usually these 25 teams comprised corporate finance for the</p>
<p style="text-align: right;">Page 14</p> <p>1 requests from U.S. or European clients of Goldman 2 for information or advice regarding Mexico. I was 3 frequently calling on American companies as well, 4 but for the most part the underwriting we did was 5 in my case mainly Mexican companies, in other cases 6 they were Latin American companies from Brazil or 7 other -- other nations. But in the case of Mexico, 8 all the companies that we worked with were in -- 9 underwritten in the United States for placement of 10 securities through the New York Stock Exchange. 11 <b>Q. So these were Mexican companies that -- 12 that had shares listed on the American stock 13 exchanges?</b> 14 A. Yes. Well, New York Stock Exchange for 15 the most part. 16 <b>Q. New York Stock Exchange?</b> 17 A. Yes. 18 <b>Q. Okay. And you said you worked on 19 different types of transactions for these clients, 20 valuation I think you said, underwriting?</b> 21 A. Yes. 22 <b>Q. So approximately how many underwritings 23 did you work on while you were at Goldman?</b> 24 A. I would say counting those we worked on 25 but did not realize for one reason or another</p>	<p style="text-align: right;">Page 16</p> <p>1 management of due diligence, debt capital markets 2 if it was a debt offering, and the equity desk and 3 often involved the interest or involvement of the 4 senior management of the company as well. 5 And I would join the teams from the 6 outset first in what we call the coverage of the 7 company, calling on the company, making the 8 presentation. In several cases the company 9 communicated its decision to work with Goldman 10 Sachs through me and then I would help form the 11 team that responded to that mandate. 12 The process begins with due diligence. 13 I would frequently join the due diligence teams 14 which were exploring issues about the issuer, 15 meeting with officials of the company or in the 16 case of privatizations, meeting with officials of 17 the government who were selling the shares or the 18 government's representative, which happened to be a 19 bank, and one of the largest transactions, which 20 was the Telmex transaction. 21 Once the due diligence was completed, I 22 would work with the team on the preparation of the 23 prospectus, work with the equity desk as they 24 contacted investors about the offering and would be 25 present in the communications with the company if</p>

<p style="text-align: right;">Page 17</p> <p>1 any issues had arose or what the pricing might be 2 for the deal, what -- what the market was like for 3 the deal, that sort of thing. 4 <b>Q. So when you say you worked with the</b> 5 <b>equity desk, did you actually contact customers and</b> 6 <b>talk with customers, potential purchasers?</b> 7 A. Sometimes, yes. In the context of the 8 road shows, which would be used to present these 9 companies to the market. I would meet with -- with 10 the investors either in New York or wherever they 11 happened to be, and that would include United 12 States and Europe, to introduce the company to the 13 investors. 14 <b>Q. Were you considered a salesperson at</b> 15 <b>Goldman?</b> 16 A. No. 17 <b>Q. Okay. So did you ever solicit orders</b> 18 <b>directly and take orders from customers?</b> 19 A. I did for a brief time when I was in 20 Mexico. I oversaw the trading desk we had in 21 Mexico and -- 22 <b>Q. When was that? Sorry.</b> 23 A. That was -- well, we formed the Mexican 24 company in December of 1994, we began trading on 25 the Mexican stock exchange -- would have been in</p>	<p style="text-align: right;">Page 19</p> <p>1 <b>if anything, after Rapid Money?</b> 2 A. Then I joined LECG, which is a expert 3 services firm. That was in 2005. And after that I 4 joined FTI in 2009 and BRG in 2012. 5 <b>Q. And both FTI and Berkeley -- BRG are</b> 6 <b>expert search firms?</b> 7 A. Not search, expert services. 8 <b>Q. Services. So in terms of your</b> 9 <b>underwriting experience, to the extent there is</b> 10 <b>any, I don't mean that pejoratively, it's the time</b> 11 <b>that you spent at Goldman, correct?</b> 12 A. Yes. 13 <b>Q. And that -- that's it, right?</b> 14 A. Well, there was a brief time after 15 Goldman when I was soliciting business together 16 with other broker-dealers for a much smaller firm, 17 but I don't recall that ever led to an actual 18 underwriting. 19 <b>Q. Okay. And do you have any experience</b> 20 <b>with working with Canadian issuers?</b> 21 A. We did work with Wood Gundy in a couple 22 of transactions. They were part of the selling 23 syndicate for the Telmex transaction, for example. 24 <b>Q. So they were part of the syndicate.</b> 25 <b>Did you ever work with a Canadian company, an</b></p>
<p style="text-align: right;">Page 18</p> <p>1 1996. I think we began trading in 1996, so it 2 would have been in the period between '96 and '98. 3 <b>Q. Okay. And when you were on -- when you</b> 4 <b>were overseeing the trading desk, was that in</b> 5 <b>connection with underwritings or was that in</b> 6 <b>connection with something else?</b> 7 A. Normally it was in connection with 8 transactions, buy/sell transactions on the 9 exchange. Any ticket had to be signed by a 10 supervisor of the bank. The office of Mexico, I 11 mean Goldman Sachs. 12 <b>Q. Did -- were you considered part of the</b> 13 <b>Goldman securitization department or desk?</b> 14 A. I worked with them, but I was not part 15 of that desk. 16 <b>Q. What did you do after you left Goldman?</b> 17 A. I formed with some others a company 18 known as Rapid Money Corporation, which was a money 19 transfer company offering services to migrant 20 workers who wished to transmit money back to Mexico 21 and other Latin American companies. 22 <b>Q. That didn't involve -- that did not</b> 23 <b>involve underwriting, I assume, correct?</b> 24 A. No, it did not. 25 <b>Q. Okay. And. What did you do after --</b></p>	<p style="text-align: right;">Page 20</p> <p>1 <b>issuer?</b> 2 A. Not that I recall. 3 <b>Q. Okay. And did you ever work on an</b> 4 <b>underwriting that was a Canadian underwriting?</b> 5 A. I'm not sure what you mean. Solely a 6 Canadian underwriting? 7 <b>Q. Let's start with that, sure.</b> 8 A. No. 9 <b>Q. Did you ever work on a company that was</b> 10 <b>partly an underwriting in Canada?</b> 11 A. I don't recall. Well, yes, partly an 12 underwriting in Canada, of course. We worked 13 with -- as I said, on the Telmex transaction 14 Goldman was the book runner for all the books. 15 That's the U.S., Europe and Asia, and North America 16 included Canada. So as I said, we worked with Wood 17 Gundy. Wood Gundy participated in the road show 18 and the transactions. But I didn't travel to 19 Canada, I worked with Wood Gundy. 20 <b>Q. What kind of work did you do at Wood</b> 21 <b>Gundy?</b> 22 A. I didn't work at Wood Gundy. I'm just 23 saying they were in the selling syndicate. 24 <b>Q. So you had no role sort of in</b> 25 <b>connection with what was going on in Canada, is</b></p>



<p style="text-align: right;">Page 21</p> <p>1 that fair to say, in that transaction?</p> <p>2 A. Only insofar as I helped prepare the</p> <p>3 prospectus and get the documents ready for the</p> <p>4 transaction.</p> <p>5 Q. Did you prepare any documents that you</p> <p>6 know were filed in Canada?</p> <p>7 A. I presume that something was filed</p> <p>8 related to the prospectus that we did, but I was</p> <p>9 not involved in the filing.</p> <p>10 Q. Now, I -- I believe you said you've</p> <p>11 given deposition testimony before?</p> <p>12 A. Yes.</p> <p>13 Q. Is that all in connection with expert</p> <p>14 services?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. How many times have you -- well,</p> <p>17 let's start generally.</p> <p>18 How many -- how many expert engagements</p> <p>19 do you think you've worked on?</p> <p>20 A. Oh, 20, 25, I guess.</p> <p>21 Q. Okay. And how many of those resulted</p> <p>22 in you offering an expert report?</p> <p>23 A. 10 to 15, I guess.</p> <p>24 Q. Okay. And how many resulted in</p> <p>25 depositions? I guess five?</p>	<p style="text-align: right;">Page 23</p> <p>1 capital raising services.</p> <p>2 Q. Have you given -- offered expert</p> <p>3 opinions in the areas of underwriting before?</p> <p>4 A. Yes.</p> <p>5 Q. And tell me about -- generally tell me</p> <p>6 about those.</p> <p>7 A. Well, the first case that I worked on</p> <p>8 was a case involving the underwriter of various</p> <p>9 transactions for Enron. There was a second case</p> <p>10 where I was involved in assessing the due diligence</p> <p>11 that had been performed for the -- prior to the</p> <p>12 underwritings for WorldCom. Similarly I worked on</p> <p>13 tran -- on a matter involving the various rounds of</p> <p>14 due diligence and underwriting that had taken place</p> <p>15 for Refco, that's R-E-F-C-O --</p> <p>16 Q. Yup.</p> <p>17 A. -- and in other matters relating to</p> <p>18 mortgage-backed securities. I opined on the</p> <p>19 underwriting process and in particular the due</p> <p>20 diligence prior to the underwriting of the</p> <p>21 securities, the mortgage-backed securities that</p> <p>22 were offered in the markets.</p> <p>23 Q. Have you ever provided any expert</p> <p>24 testimony in connection with any Canadian</p> <p>25 underwriting?</p>
<p style="text-align: right;">Page 22</p> <p>1 A. Five or six, yeah.</p> <p>2 Q. And have you ever testified in a court?</p> <p>3 A. Yes.</p> <p>4 Q. How many times?</p> <p>5 A. Once in a court, twice in arbitration.</p> <p>6 Q. In each of those were you actually</p> <p>7 qualified by the court as an expert?</p> <p>8 A. Well, the -- formally I was qualified</p> <p>9 in the Southern District of New York. The process</p> <p>10 in the arbitrations was less formal, but I'm -- I</p> <p>11 was not -- I was admitted to the testimony. I</p> <p>12 don't recall it using the word qualified in the</p> <p>13 arbitrations however.</p> <p>14 Q. That's fine. In the Southern District</p> <p>15 action, what area were you giving expert testimony</p> <p>16 in?</p> <p>17 A. That was a transaction -- a suit</p> <p>18 involving a transaction, a mergers and acquisitions</p> <p>19 transaction, I was testifying as to the damages</p> <p>20 that had been sustained.</p> <p>21 Q. And what about the arbitrations?</p> <p>22 What -- what expert opinions in general were you</p> <p>23 offering in those arbitrations?</p> <p>24 A. One was related to a project financing</p> <p>25 and the other was related to a compensation for</p>	<p style="text-align: right;">Page 24</p> <p>1 A. No.</p> <p>2 Q. Have you ever provided expert testimony</p> <p>3 on the way that an underwriting should be</p> <p>4 characterized?</p> <p>5 A. Not exactly as -- as we're doing here,</p> <p>6 no.</p> <p>7 Q. Have you ever provided expert testimony</p> <p>8 before on Rule 105, as you understand it?</p> <p>9 A. No.</p> <p>10 Q. Rule 105 was not in existence while you</p> <p>11 were at Goldman; is that fair to say?</p> <p>12 A. I don't recall. I don't recall.</p> <p>13 Q. Did you -- did you have ever any</p> <p>14 occasion to -- while you were working to -- to</p> <p>15 review 105 or its predecessor?</p> <p>16 A. Not that I recall.</p> <p>17 Q. Have you ever been the subject of a SEC</p> <p>18 or FINRA inquiry?</p> <p>19 A. No.</p> <p>20 Q. Okay. Have you ever been a defendant</p> <p>21 or plaintiff in a lawsuit?</p> <p>22 A. No. Well, excuse me, there was a -- a</p> <p>23 lawsuit related to a piece of property I own in San</p> <p>24 Francisco, but that I was for a while a defendant,</p> <p>25 but the case never went anywhere.</p>



Page 25

1 **Q. Is that Califass vs. Erb? Is that**  
2 **the --**  
3 A. Yes, Califass. I've forgotten how to  
4 spell Califass. It's in the record I think.  
5 **Q. Was -- was the allegation in there a**  
6 **fraud allegation related to the property?**  
7 A. No. It was an allegation regarding a  
8 sale to a third party rather than anything I had  
9 formed with regard to Mr. Califass.  
10 **Q. Okay. And that -- what happened with**  
11 **that case?**  
12 A. Nothing.  
13 **Q. Was it settled or was it --**  
14 A. No. It just --  
15 **Q. Faded away?**  
16 A. -- faded away.  
17 **Q. I think in your -- and I'll just mark**  
18 **this so we have it.**  
19 **MR. YOSKOWITZ:** We're going to mark as Exhibit  
20 67 the expert report of Guy Erb.  
21 A. Thank you.  
22 **Q. There's a -- there -- under teaching**  
23 **experience, Mr. Erb --**  
24 A. Yes.  
25 **Q. -- it says you're a faculty director**

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1 **and senior fellow in global finances at the Levin**  
2 **Graduate Institute?**  
3 A. Yes.  
4 **Q. Where is that?**  
5 A. It's part of the -- I think it was part  
6 of the State University of New York system. I'm  
7 not sure of its status right now. Their location  
8 physically was on East 54th Street.  
9 **Q. Okay. Okay. You think they were part**  
10 **of the SUNY system when you were there?**  
11 A. Yes, definitely.  
12 **Q. Did -- did you actually teach a course?**  
13 A. Yes.  
14 **Q. And what course did you teach?**  
15 A. It was called global finance, I  
16 believe, or something to that effect. I taught  
17 that for three different semesters.  
18 **Q. Okay. Did that course in any way --**  
19 **did you cover underwritings in that course?**  
20 A. Yes.  
21 **Q. Okay. Did you cover Rule 105 in that**  
22 **course?**  
23 A. No.  
24 **Q. Okay. It says you also were an adjunct**  
25 **professor at Georgetown?**

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1 A. That was in 1981 after I left the  
2 Government.  
3 **Q. Okay. Did you teach any courses while**  
4 **you were there?**  
5 A. One course, as I recall.  
6 **Q. What was that course?**  
7 A. It was a course on, again,  
8 international relations focused on the political  
9 and economic risk that foreign investors raise.  
10 **Q. And you have -- you don't have a list,**  
11 **but you have a summary of sort of your**  
12 **publications?**  
13 A. Yes.  
14 **Q. Are there any publications that cover**  
15 **the way underwriting is conducted?**  
16 A. No.  
17 **Q. And are there any publications**  
18 **concerning Rule 105 or its predecessor?**  
19 A. No.  
20 **Q. Have you written articles or**  
21 **underwritings?**  
22 A. I believe I would have touched on  
23 underwritings or commented on them, but not one  
24 that's focused entirely on underwriting, no.  
25 **Q. When were you first contacted by**

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1 **someone regarding this engagement?**  
2 A. Sometime in 2014 I think. I'm not sure  
3 of an exact date.  
4 **Q. And who contacted you?**  
5 A. I believe it was Mr. Stodghill.  
6 **Q. Okay. And what did he -- the SEC, what**  
7 **did they ask you to do?**  
8 A. I was asked to opine on the  
9 underwriting of Central Fund of Canada's shares in  
10 November of 2009 and to assess whether it was a  
11 firm commitment or best efforts underwriting.  
12 **Q. And have you ever been retained as an**  
13 **expert by the SEC?**  
14 A. No.  
15 **Q. Okay. Have you ever worked with**  
16 **Mr. Stodghill before?**  
17 A. No.  
18 **Q. Okay. I take it -- strike that.**  
19 **Did you ever -- did you have any**  
20 **familiarity with the defendants in this action**  
21 **before you were contacted by Mr. Stodghill?**  
22 A. No.  
23 **Q. What about Central Fund of Canada?**  
24 A. No, I don't think so.  
25 **Q. By the way, while you were at -- while**

<p style="text-align: right;">Page 29</p> <p>1 you were at Goldman, did you have any -- did any of</p> <p>2 your matters concern Goldman and silver markets?</p> <p>3 A. I'm trying to recall. I don't think so</p> <p>4 directly, not in the sense that we didn't</p> <p>5 underwrite anything such as the Central Fund.</p> <p>6 That's hard to say whether or not there wasn't some</p> <p>7 tangential connection.</p> <p>8 Q. Okay. What about --</p> <p>9 A. Well, excuse me one second.</p> <p>10 Q. Okay.</p> <p>11 A. We did work quite a lot with Grupo</p> <p>12 Mexico in Mexico, which is a mining company.</p> <p>13 Q. A mining company?</p> <p>14 A. Yes.</p> <p>15 Q. Do they mine gold and silver?</p> <p>16 A. Among other things.</p> <p>17 Q. What did you do for that company?</p> <p>18 A. We talked to them about a number of</p> <p>19 different possibilities, but while I was there I</p> <p>20 don't believe we ever did a deal with them.</p> <p>21 Q. Did you have any familiarity with</p> <p>22 closed-end funds while you were at Goldman?</p> <p>23 A. Certainly I was aware of closed-end</p> <p>24 funds. We had quite a wide array of products to</p> <p>25 consider at Goldman and they were among those</p>	<p style="text-align: right;">Page 31</p> <p>1 drafting your report?</p> <p>2 A. Yes.</p> <p>3 Q. And who assisted you?</p> <p>4 A. Staff of BRG.</p> <p>5 Q. What -- what -- who are they and what</p> <p>6 do they do?</p> <p>7 A. Normally we work with a case manager.</p> <p>8 In this case it was Dr. Tim Savage, Timothy Savage.</p> <p>9 Q. Okay.</p> <p>10 A. The junior staff included Collette</p> <p>11 Porter and -- and we worked with -- for a while</p> <p>12 with Jocelyn Teece.</p> <p>13 Q. What did Dr. Savage do?</p> <p>14 A. He assisted me in the preparation of</p> <p>15 the report. He also assisted in the preparation of</p> <p>16 the statistical analysis of the gold and silver</p> <p>17 markets and the charts and material related to the</p> <p>18 evolution of the price of the Central Fund. He</p> <p>19 also assisted me in commenting on the draft report</p> <p>20 and generally offering advice from the perspective</p> <p>21 of a Ph.D. in economics.</p> <p>22 Q. Did he give you -- did he give you any</p> <p>23 advice that informed your opinion in this area?</p> <p>24 A. No. I was able to be do that based on</p> <p>25 my own experience and -- and education and training</p>
<p style="text-align: right;">Page 30</p> <p>1 products.</p> <p>2 Q. Did you actually do any work for</p> <p>3 closed-end funds while you were there?</p> <p>4 A. Not that I recall.</p> <p>5 Q. Do you recall if this mining operation</p> <p>6 was a closed-end fund?</p> <p>7 A. No, no. It was a mining company.</p> <p>8 Q. Okay. When did you first put together,</p> <p>9 I guess, a draft of your expert opinion in this</p> <p>10 case?</p> <p>11 A. It would have been during May/June, I</p> <p>12 believe.</p> <p>13 Q. Of this year?</p> <p>14 A. Of this year.</p> <p>15 Q. So -- and I'm not trying to get behind</p> <p>16 any of your communications, but I'm just wondering</p> <p>17 if you did any work from the time you were</p> <p>18 contacted in 2014 to May/June of this year on this</p> <p>19 matter.</p> <p>20 A. Probably, but I don't recall exactly</p> <p>21 what -- what the timetable was.</p> <p>22 Q. So the first time you sort of put pen</p> <p>23 to paper was in May/June of this year?</p> <p>24 A. I don't recall.</p> <p>25 Q. Okay. Did -- did anyone assist you in</p>	<p style="text-align: right;">Page 32</p> <p>1 and different matters I worked on at Goldman.</p> <p>2 Q. So -- so turn to your report, and just</p> <p>3 while we're on this area, just turn to page 9 of</p> <p>4 your report, and under A on that page it says gold</p> <p>5 and silver markets and there's a couple of</p> <p>6 paragraphs?</p> <p>7 A. Yes.</p> <p>8 Q. Is that the information that you got</p> <p>9 from Dr. Savage?</p> <p>10 A. In part, yes.</p> <p>11 Q. Well, did he -- there's a bunch of</p> <p>12 footnotes to various industry reports. Is that</p> <p>13 something that Dr. Savage put together?</p> <p>14 A. Together with the team, yes.</p> <p>15 Q. Okay. And I think you testified you --</p> <p>16 you don't really have any experience in the gold</p> <p>17 and silver markets right?</p> <p>18 A. Well, not directly, no.</p> <p>19 Q. Okay. All right. So what -- what is</p> <p>20 your expert area, Dr. Erb that -- or is it Dr. or</p> <p>21 Mr.?</p> <p>22 A. Mr.</p> <p>23 Q. Okay. Sorry. What is your area,</p> <p>24 Mr. Erb, that you're being offered for as an</p> <p>25 expert?</p>

<p style="text-align: right;">Page 33</p> <p>1 A. The underwriting of securities 2 transactions. 3 <b>Q. What did Collette Porter do, if</b> 4 <b>anything?</b> 5 A. In part the research that you referred 6 to here in footnotes 12, 13, 14 and some of the 7 calculations we see in -- in the report and also 8 the review of case material. 9 <b>Q. When you say case material, what do you</b> 10 <b>mean?</b> 11 A. All the material that was produced with 12 regard to this matter. 13 <b>Q. What -- what did you look at -- and I</b> 14 <b>know there's a list in the back, but generally what</b> 15 <b>did you look at with regard to forming your opinion</b> 16 <b>in this matter? I guess we'll talk about the</b> 17 <b>citations, but in terms of the case file, what did</b> 18 <b>you look at?</b> 19 A. Either I or Ms. Porter or Dr. Savage 20 looked at nearly every document that was produced 21 that we had. We used them to support or comment on 22 my opinion. 23 <b>Q. Did you actually request any documents</b> 24 <b>from the SEC?</b> 25 A. Yes, we did.</p>	<p style="text-align: right;">Page 35</p> <p>1 <b>information with respect to your opinions in this</b> 2 <b>report?</b> 3 A. Among the materials produced there are 4 some Canadian documents. 5 <b>Q. Apart from the case files?</b> 6 A. No. 7 <b>Q. Okay.</b> 8 A. Well, let me think for a minute. I'm 9 not sure as I look at this whether some of the 10 sources were not of Canadian origin, but I'm not 11 sure. 12 <b>Q. Okay. If you turn to page 6 of your</b> 13 <b>report, 17 has the basis of opinions; do you see</b> 14 <b>that?</b> 15 A. Yes. 16 <b>Q. Okay. We've talked about, I assume,</b> 17 <b>your professional training and experience, there's</b> 18 <b>nothing that we haven't talked about that you</b> 19 <b>relied on this report; is that correct?</b> 20 A. Well, there's a lot of experience at 21 Goldman that's relevant to this. When I referred 22 to the number of underwritings we'd done, I was 23 referring to the successful underwritings, those 24 actually placed in the markets. There were another 25 five or six that were carried forward to near</p>
<p style="text-align: right;">Page 34</p> <p>1 <b>Q. And what documents did you request?</b> 2 A. Well, I can recall some of the 3 documents relating to press releases from the SEC 4 that were issued in the 1990s, we had difficulty 5 finding those. They provided those. 6 <b>Q. Anything else?</b> 7 A. We made a general request for documents 8 produced and they responded. I'm sure that we 9 probably asked for individual documents that we 10 couldn't find or were uncertain about. 11 <b>Q. Was there any document you requested</b> 12 <b>from the case file that you did not get?</b> 13 A. No. 14 <b>Q. How are you being compensated for this</b> 15 <b>matter or how is BRG being compensated?</b> 16 A. My rate for this matter is \$500 per 17 hour. 18 <b>Q. And do you know how much BRG has</b> 19 <b>incurred in -- in fees so far on this matter?</b> 20 A. Roughly \$100,000. 21 <b>Q. Did you review any Canadian offerings</b> 22 <b>apart from the Central Fund of Canada in connection</b> 23 <b>with this report?</b> 24 A. No. 25 <b>Q. Did you review any Canadian sources of</b></p>	<p style="text-align: right;">Page 36</p> <p>1 completion or beginning of operations that were not 2 executed, so those went into my opinions as well. 3 <b>Q. You've -- you've -- you've mentioned</b> 4 <b>that you were looking at in this engagement whether</b> 5 <b>something was a firm commitment or best efforts</b> 6 <b>offering?</b> 7 A. Yes. 8 <b>Q. How many of those five offerings were</b> 9 <b>firm commitment offerings?</b> 10 A. All of them. 11 <b>Q. Have you ever worked on a best efforts</b> 12 <b>offering?</b> 13 A. No, I have not. 14 <b>Q. The ones that were -- never got to</b> 15 <b>realization, were any of those going to be best</b> 16 <b>efforts offerings?</b> 17 A. No. 18 <b>Q. All right. So is it fair to say -- the</b> 19 <b>next sort of clause in that basis of opinion is the</b> 20 <b>review and analysis of independent research and</b> 21 <b>other public material. Is all the research and</b> 22 <b>public material that you relied on referenced in</b> 23 <b>the report?</b> 24 A. Yes. 25 <b>Q. Under the opinion, under 18 there's</b></p>

<p style="text-align: right;">Page 37</p> <p>1 a -- there's a reference on the second line to the 2 standards and practice in the industry; do you see 3 that? 4 A. Yes. 5 Q. What do you mean by that? 6 A. Well, I'm drawing on my experience at 7 Goldman Sachs and to a certain extent at Lafayette 8 Capital there where we would work according to the 9 standards set by the framework of regulations, the 10 framework of commitments that underlay transactions 11 in the investment banking business. 12 The practices included due diligence, 13 consultation with legal teams, the method of 14 pricing transactions. All those different aspects 15 went into my understanding of what the standards 16 and practices are. 17 Q. Okay. What experience at Lafayette 18 goes -- went into -- did you rely on? 19 A. Just the due diligence that goes into 20 different transactions, which when you're working 21 on a merger transaction, much of the due diligence 22 is similar, you're trying to find out as much about 23 the company as you can. 24 Q. If I remember your testimony, you 25 didn't work on underwritings at Lafayette, right?</p>	<p style="text-align: right;">Page 39</p> <p>1 Q. And did you discuss -- how did that 2 sort of no opinion -- I don't know what to call it 3 because it's not an opinion, but -- but how did 19 4 come about? Was that in your initial discussions 5 with the SEC? 6 A. No. This was in my initial draft. I 7 just felt that it had been in the Complaint and 8 therefore just -- I was -- I felt that I was 9 obligated to make some sort of comment on it. 10 Q. Setting aside the -- 11 A. Excuse me. I misspoke. It's the 12 defendant's answer, not the Complaint. Pardon me. 13 Q. Right. I heard Answer in the second 14 part. 15 MR. STODGHILL: I heard Complaint. 16 A. Sorry about that. 17 Q. And I guess when you were contacted by 18 the SEC in 2014, had the Complaint in this case 19 already been filed? Was this already a Southern 20 District action? 21 A. I don't recall the exact dates, but I 22 believe it must have been, yes. 23 Q. Okay. Am I correct that - you know, 24 the first sentence of 19, you're agreeing with the 25 factual statement that's in the Answer, right?</p>
<p style="text-align: right;">Page 38</p> <p>1 A. That's correct. 2 Q. All right. So if I ask you did you 3 look at a firm commitment offering at Lafayette, 4 the answer would be no, right? 5 A. Right. 6 Q. And the same for best efforts, right? 7 A. Yes. 8 Q. Yes, the answer is no, right? Just so 9 the record is clear. We'll get to your -- your 10 opinion, which is in 18, that the underwriting in 11 this offering was in all respects a firm 12 commitment, which is your opinion. I have a 13 question about 19. 14 A. Yes. 15 Q. How did 19 come about? Were you 16 asked -- you said you were asked I think to look at 17 how the underwriting essentially in this offering 18 should be characterized? What is 19 meant to do 19 there? 20 A. Respond to a comment or a -- an 21 allegation in the Complaint. 22 Q. And what -- what allegation is that? 23 A. Well, I don't have it in front of me 24 right now, but they did refer to this issue of how 25 the price was set.</p>	<p style="text-align: right;">Page 40</p> <p>1 A. Yes. 2 Q. Okay. You're not -- okay. So in your 3 review of the facts, you're -- it's your 4 understanding that Central Fund is a Canadian 5 closed-end fund? 6 A. Yes. 7 Q. Okay. And they're headquartered in 8 Canada? 9 A. Yes. 10 Q. And they don't actually have a U.S. 11 presence, correct? 12 A. I don't know of one. 13 Q. Okay. And the underwriters -- at least 14 the lead underwriter was CIBC World Markets, Inc.? 15 A. Yes. 16 Q. And they're -- they're located in 17 Canada, correct? 18 A. In both Canada and the United States, 19 yes. 20 Q. But the office that was dealing with 21 this Central Fund of Canada was in -- was in 22 Canada? 23 A. Yes. 24 Q. Okay. And the transfer agent was the 25 Canadian Trust Company, is that your understanding?</p>

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1 A. Well, I think there was shared  
2 responsibility for the transfer agent between the  
3 U.S. and the Canadian entity.  
4 **Q. Did you look at the depositions of the**  
5 **Canadian Trust Company and the depository company?**  
6 A. If you mean CIBC Mellon, yes.  
7 **Q. Okay. Well, yes, I'll -- at the time**  
8 **they were CIBC Mellon, right?**  
9 A. Well, I -- Mr. Daly was -- right.  
10 Daly. I think it's D-A -- is it Mr. or Ms. Daly?  
11 **Q. It's Mr. Daly.**  
12 A. Mr. Daly, yes.  
13 **Q. And so you're aware that the share**  
14 **certificate for all the shares was filed with that**  
15 **Canadian depository, correct?**  
16 A. I don't know the dates of that  
17 particular aspect.  
18 **Q. Okay. And you're aware that Revelation**  
19 **Capital is located in Bermuda?**  
20 A. Yes.  
21 **Q. Did you consider any Canadian law when**  
22 **drafting your report?**  
23 A. No, not directly.  
24 **Q. And did you consider Canadian custom**  
25 **and practice?**

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1 A. No. Well, excuse me, I think to the  
2 extent that it's described in the depositions and  
3 the -- what we call the IROC memo was circulated  
4 under the authority of the Canadian regulator, to  
5 that extent, yes.  
6 **Q. Okay. Do you have any experience with**  
7 **a multijurisdictional system?**  
8 A. Well, yes, we did something comparable  
9 to that when we underwrote a number of the  
10 transactions, particularly the first one, where I  
11 mentioned that Wood Gundy was -- represented the  
12 syndicate. I don't recall at that time whether the  
13 multijurisdictional procedures were exactly the  
14 same or in place at the time, but we certainly had  
15 deals that involved many different countries and  
16 would have observed whatever regulations and rules  
17 were extended in Europe or England or Japan or  
18 Canada at the time.  
19 **Q. It's fair to say in a**  
20 **multijurisdictional offering you have to look at**  
21 **the laws of each country?**  
22 A. I don't know the questions of law.  
23 **Q. Okay. So can you tell me why it's your**  
24 **opinion that the underwriting in this offering was**  
25 **a -- I guess in all respects a firm commitment**

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1 **underwriting?**  
2 A. As I outline in the report, the  
3 components of my decision include my own experience  
4 with firm commitment underwritings, my  
5 understanding of what a best efforts underwriting  
6 is, the language of the offering documents in my  
7 mind makes it clear that this is a firm commitment  
8 underwriting and, as I understand, the framework  
9 provided by various regulations of the SEC and --  
10 conforms to the firm commitment underwriting.  
11 **Q. When you say the language of the**  
12 **offering document, what do you mean?**  
13 A. The base shelf prospectus is the first  
14 of the documents and the prospectus supplement,  
15 which was filed on the day of the offering, is the  
16 other. They're the two primary offering documents  
17 and each one defines the transaction as a firm  
18 commitment underwriting.  
19 **Q. It doesn't actually use those words,**  
20 **right?**  
21 A. It uses the term purchase, which is a  
22 characteristic of firm commitment underwritings.  
23 **Q. But just so we're clear, it doesn't use**  
24 **the word firm commitment?**  
25 A. I'm not sure I focus -- I focused on

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1 the fact that it says purchase. I don't recall in  
2 the entire document whether that phrase is used or  
3 not.  
4 **Q. You didn't think it was important when**  
5 **you were looking at a document to see if it's**  
6 **characterized at a firm commitment to see if the --**  
7 **if those words are in the document?**  
8 A. Well, once you purchase shares, you've  
9 made a firm commitment, as the record indicates.  
10 In fact, going firm is a term that was used by one  
11 of the deponents in the matter.  
12 **Q. What does going firm mean?**  
13 A. It means you've underwritten the deal.  
14 **Q. And what does underwriting the deal**  
15 **mean?**  
16 A. It means you have purchased the shares  
17 for sale to individual investors.  
18 **Q. Is every underwritten deal a firm**  
19 **commitment?**  
20 A. Is every --  
21 **Q. Underwritten deal a firm commitment?**  
22 A. Yes.  
23 **Q. So you're saying you cannot have an**  
24 **underwritten deal that's not a firm commitment?**  
25 A. Strictly speaking, that's true. There



<p style="text-align: right;">Page 45</p> <p>1 is a certain flexibility or looseness in the 2 terminology. It's not infrequent for the term 3 underwriter to be used -- as I show in another 4 paragraph of the report to be used in a description 5 of a best efforts underwriting, but as I 6 understand, the term underwriting strictly defined 7 means the purchase of the shares. 8 <b>Q. Well, where is it strictly defined?</b> 9 A. This is coming back to the standards 10 and practices of the industry. This has all been 11 consistent with my experience, consistent with the 12 documents where it says the underwriters commit to 13 purchase the shares. That is the indication that 14 it's a firm commitment, it's an underwriting 15 properly defined. 16 <b>Q. Right. So when you say strictly</b> 17 <b>defined, you're not saying it's written down</b> 18 <b>anywhere that way, you're saying that in your</b> 19 <b>experience in the trading markets an underwriting</b> 20 <b>deal is a firm commitment, but you're also saying</b> 21 <b>that there's some flexibility so that under a</b> 22 <b>deal -- best efforts deals are sometimes referred</b> 23 <b>to as underwritten deals, correct?</b> 24 A. They are, but incorrectly. 25 <b>Q. Okay. But they are?</b></p>	<p style="text-align: right;">Page 47</p> <p>1 key to a best efforts underwriting, that the 2 underwriters or the agents are not bound to 3 purchase the shares, they bear no responsibility 4 for purchasing the shares. 5 <b>Q. Okay. So if I hear what you're saying,</b> 6 <b>in a best efforts deal, the documents could say</b> 7 <b>that this is an underwritten deal or referred to</b> 8 <b>the underwriters, correct?</b> 9 A. It could refer to the underwriters when 10 they really mean the agents, and we've illustrated 11 that in the report. It could not refer to 12 underwriting in the sense that the agents would 13 purchase the shares. 14 <b>Q. Okay. But you're talking about senses</b> 15 <b>and what's -- you're not talking about the written</b> 16 <b>words.</b> 17 A. Yes, I am. I mean, if -- if you're 18 talking about the deal that's described in the -- 19 in -- if it is a best efforts offering, they will 20 say words to the effect that there is no obligation 21 to purchase the shares by the firms that are 22 running the underwriting or the agency sales. 23 <b>Q. But again, you're using the words to</b> 24 <b>the effect, right, so that does -- there's no --</b> 25 <b>there's no specific words, these -- for example,</b></p>
<p style="text-align: right;">Page 46</p> <p>1 A. Yes. 2 <b>Q. Okay.</b> 3 A. But there's -- commenting on your 4 phrase you used there written down, it's frequently 5 written down in the literature surrounding equity 6 underwriting. I have a quote to that effect in the 7 report. 8 <b>Q. Okay. But we're -- now we're talking</b> 9 <b>about the documents themselves.</b> 10 A. Yes. 11 <b>Q. And in the documents themselves,</b> 12 <b>prospectuses, and other documents relating to</b> 13 <b>underwritings, a best efforts deal could be</b> 14 <b>referred to as an underwritten deal, correct?</b> 15 A. Not in the offering documents, no. 16 <b>Q. Not in the offering documents?</b> 17 A. No. 18 <b>Q. How is a best efforts deal referred to</b> 19 <b>in offering documents?</b> 20 A. Well, it usually refers -- if -- if the 21 term agent is used, it's quite clear they're 22 selling agents. If the term underwriter is used, 23 it usually is accompanied by a phrase or a 24 definition that says these firms are under no 25 obligation to purchase the shares. And that is the</p>	<p style="text-align: right;">Page 48</p> <p>1 <b>just in taking your opinion, you're saying this is</b> 2 <b>a firm commitment offering, but the words firm</b> 3 <b>commitment don't appear in the documents, right?</b> 4 A. The definition of a firm commitment 5 offering is the purchase of the shares, so it does 6 implicitly infer -- 7 <b>Q. I'm not talking about implicitly,</b> 8 <b>Mr. Erb.</b> 9 <b>MR. STODGHILL:</b> Wait a minute. Let him -- let 10 him finish. 11 <b>Q. I'm not talking implicitly, Mr. Erb.</b> 12 <b>I'm saying do the words firm commitment just like</b> 13 <b>that appear in the base shelf prospectus?</b> 14 A. I don't know. 15 <b>Q. So you have -- if you turn to your</b> 16 <b>report on page 7, you know, you have background on</b> 17 <b>closed-end funds, it's fair to say -- and I think</b> 18 <b>you testified to that, that you don't really have</b> 19 <b>any experience in closed-end funds and presumably</b> 20 <b>some of this research, if all of it, was just done</b> 21 <b>by people at BRG, correct?</b> 22 A. No. I have in my personal investments 23 purchased closed-end funds so I'm familiar with the 24 concept and certainly we did deal with all aspects 25 of sales activities at Goldman Sachs and frequently</p>



<p style="text-align: right;">Page 49</p> <p>1 were talking to private client representatives who 2 were transacting in closed-end funds, so it's not 3 just book knowledge. 4 <b>Q. But you didn't -- the underwritings</b> 5 <b>that you did were not closed-end funds, is that</b> 6 <b>correct, while you were at Goldman?</b> 7 A. That's correct. 8 <b>Q. Okay. And I think we talked about the</b> 9 <b>gold and silver market. Do you follow the gold and</b> 10 <b>silver market in your work?</b> 11 A. Yes. As I follow many different 12 international markets. 13 <b>Q. So have you written on the gold and</b> 14 <b>silver markets?</b> 15 A. I don't recall if we've actually -- not 16 a single article solely dedicated to that, but it's 17 quite likely that I referred to those markets or 18 commodity markets in general. 19 <b>Q. Does -- does the -- I'm looking at 9</b> 20 <b>and -- and I guess on 9, the 24 and 25 and 26</b> 21 <b>paragraphs.</b> 22 A. Yes. 23 <b>Q. Do those at all go into your opinion</b> 24 <b>about whether or not this is a firm commitment</b> 25 <b>offering?</b></p>	<p style="text-align: right;">Page 51</p> <p>1 <b>anybody knew that this Central Fund offering was</b> 2 <b>happening until after the close of the market on</b> 3 <b>November 9th, right?</b> 4 A. Well, certainly it had been discussed 5 within the team and with the Central Fund, but in 6 terms of general public knowledge, the announcement 7 of this deal would have marked the time it was 8 officially known. I think that's fair. 9 <b>Q. And so for my client, Revelation,</b> 10 <b>there's no indication in the record that they knew</b> 11 <b>that this offering was coming before they got word</b> 12 <b>after the close on November 9th, correct?</b> 13 A. I don't know. 14 <b>Q. And did you review Mr. Kuchanny's</b> 15 <b>testimony?</b> 16 A. I did. 17 <b>Q. And did you see that he put on hedges</b> 18 <b>related to the gold and silver markets?</b> 19 A. If it's in the deposition, I would have 20 read that. I don't recall it at this moment. 21 <b>Q. Okay. And so you don't know or haven't</b> 22 <b>analyzed what risks are inherent in sort of hedging</b> 23 <b>in the gold and silver markets at least for</b> 24 <b>purposes of this engagement?</b> 25 A. Well, I haven't studied that, but</p>
<p style="text-align: right;">Page 50</p> <p>1 A. No. This is describing the market into 2 which the -- which was relevant to the offering or 3 offerings by the Central Fund. 4 <b>Q. In 28 you talk about creating an</b> 5 <b>opportunity for traders to engage in virtually</b> 6 <b>risk-free trades; do you see that?</b> 7 A. 28. Yes. 8 <b>Q. What do you mean by that?</b> 9 A. Well, if you can sell at a lower -- let 10 me start again here. Short selling puts downward 11 pressure on prices and if you're successful in 12 selling short a product and then covering or 13 closing out that short at a price lower than you've 14 sold at, that's a profitable transaction, and if 15 the prices are aligned in such a way that you can 16 count on that relationship existing, then it's 17 virtually risk free. 18 <b>Q. So do I hear you by basically saying</b> 19 <b>you would need to know that an offering was coming</b> 20 <b>for that trade to be risk free at the time you put</b> 21 <b>on the shorts?</b> 22 A. Well, traders make judgments that are 23 independent of offerings, but that is one 24 possibility, yes. 25 <b>Q. Okay. And there's no indication that</b></p>	<p style="text-align: right;">Page 52</p> <p>1 certainly over the years I have an understanding of 2 hedging that you do in the markets. 3 <b>Q. Okay. And there are risks involved as</b> 4 <b>in any transaction, right?</b> 5 A. Yes. Some are riskier than others. 6 <b>Q. So going back to this shelf prospectus,</b> 7 <b>you understand that a shelf prospectus for Central</b> 8 <b>Fund was filed on September 8, 2009?</b> 9 A. I think that's the date, yes. 10 <b>Q. Okay. And in -- in nonfirm commitment</b> 11 <b>offerings, a shelf prospectus is also filed, right?</b> 12 <b>It's not unique to firm commitment offerings,</b> 13 <b>right?</b> 14 A. That's correct. 15 <b>Q. And there's no discussion in -- in the</b> 16 <b>record that you've seen that explicitly states that</b> 17 <b>the November 9th offering would be a firm</b> 18 <b>commitment offering, right?</b> 19 A. No, I don't think that's correct. 20 <b>Q. Okay. Why isn't that correct?</b> 21 A. The testimony of the two bankers from 22 CIBC makes reference to the fact that all the deals 23 they underwrote -- that CIBC underwrote for Central 24 Fund were firm commitment underwritings. 25 <b>Q. Where does it say that?</b></p>

<p style="text-align: right;">Page 53</p> <p>1 A. I'd have to look up the deposition.</p> <p>2 <b>Q. I would like you to tell me where any</b></p> <p>3 <b>CIBC person said exactly that these offerings were</b></p> <p>4 <b>firm commitment offerings and that every deal prior</b></p> <p>5 <b>to that was a firm commitment offering.</b></p> <p>6 A. They say that every deal we've done for</p> <p>7 the Central Fund was underwritten.</p> <p>8 <b>Q. Okay. That's not what you say in the</b></p> <p>9 <b>report, right? In the report you say that they say</b></p> <p>10 <b>that every prior Central Fund offering was a firm</b></p> <p>11 <b>commitment offering, right, and that's not what</b></p> <p>12 <b>you're saying?</b></p> <p>13 A. That's what I'm saying.</p> <p>14 <b>Q. And that's not what they said, right?</b></p> <p>15 A. They said underwritten.</p> <p>16 <b>Q. And you --</b></p> <p>17 A. And they defined the term underwritten</p> <p>18 very strictly.</p> <p>19 <b>Q. They don't define it as a firm</b></p> <p>20 <b>commitment offering, do they?</b></p> <p>21 A. They are referring to underwriting in</p> <p>22 the term -- in the way that I use it, that it means</p> <p>23 that you have purchased the shares.</p> <p>24 <b>Q. Okay. But they don't refer to the</b></p> <p>25 <b>underwriting in this deal as a firm commitment</b></p>	<p style="text-align: right;">Page 55</p> <p>1 <b>Q. Okay. Is it -- is it that they're</b></p> <p>2 <b>taking a risk? Is it the transfer of risk that</b></p> <p>3 <b>makes it --</b></p> <p>4 A. Yes.</p> <p>5 <b>Q. Okay. On page 12 of your report you</b></p> <p>6 <b>talk about the types of best efforts offerings; do</b></p> <p>7 <b>you see that?</b></p> <p>8 <b>MR. STODGHILL:</b> Which paragraph?</p> <p>9 A. Oh, yes.</p> <p>10 <b>MR. YOSKOWITZ:</b> It's -- well, I'm sorry, the</p> <p>11 main paragraph 30 any and all, all or none.</p> <p>12 <b>Q. Do you see that?</b></p> <p>13 A. Yes.</p> <p>14 <b>Q. Did you do any of that while you worked</b></p> <p>15 <b>at Goldman? You said you only worked on firm</b></p> <p>16 <b>commitment offerings?</b></p> <p>17 A. We were aware what best efforts</p> <p>18 offerings were, but as I said, we didn't do any.</p> <p>19 <b>Q. And on 31, by the way, you give -- you</b></p> <p>20 <b>give an example of a prospectus of a best efforts</b></p> <p>21 <b>agreement; do you see that?</b></p> <p>22 A. Yes.</p> <p>23 <b>Q. And you note that actually the selling</b></p> <p>24 <b>agents are described as underwriters; do you see</b></p> <p>25 <b>that?</b></p>
<p style="text-align: right;">Page 54</p> <p>1 <b>offering, correct?</b></p> <p>2 A. I haven't -- I'd have to review the</p> <p>3 depositions to see.</p> <p>4 <b>Q. Okay. You don't recall them</b></p> <p>5 <b>specifically saying that, right?</b></p> <p>6 A. Not at the moment. Except I do recall</p> <p>7 the term underwritten.</p> <p>8 <b>Q. And we've discussed that underwriting</b></p> <p>9 <b>can be used outside of the firm commitment context,</b></p> <p>10 <b>right?</b></p> <p>11 A. Yes. And that is -- they recognize</p> <p>12 that in their -- in their testimony as well.</p> <p>13 <b>Q. They recognize in their testimony that</b></p> <p>14 <b>underwriting can be used outside of the firm</b></p> <p>15 <b>commitment context, right?</b></p> <p>16 A. In the context of their statements that</p> <p>17 they were purchasing the shares, yes.</p> <p>18 <b>Q. Just -- just so I understand your -- is</b></p> <p>19 <b>it your testimony that what makes something a firm</b></p> <p>20 <b>commitment offering is -- strike that. I'll start</b></p> <p>21 <b>again.</b></p> <p>22 <b>Is it your testimony that what makes</b></p> <p>23 <b>something a firm commitment offering is the -- is</b></p> <p>24 <b>the purchase of the shares by the underwriter?</b></p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 56</p> <p>1 A. Yes.</p> <p>2 <b>Q. You're saying that that's incorrect,</b></p> <p>3 <b>right?</b></p> <p>4 A. That's correct.</p> <p>5 <b>Q. But that's the way the document reads,</b></p> <p>6 <b>right?</b></p> <p>7 A. Yes.</p> <p>8 <b>Q. Turn to page 18. And in paragraph 46</b></p> <p>9 <b>you -- you talk about the base shelf prospectus; do</b></p> <p>10 <b>you see that?</b></p> <p>11 A. Yes.</p> <p>12 <b>Q. And you actually -- you refer to a</b></p> <p>13 <b>citation in 42 of the 17 CFR 230.415; do you see</b></p> <p>14 <b>that?</b></p> <p>15 A. Yes.</p> <p>16 <b>Q. And why do you refer to that citation?</b></p> <p>17 A. That rule, Rule 415, covers shelf</p> <p>18 offerings or takedowns from base shelf</p> <p>19 prospectuses.</p> <p>20 <b>Q. Are you relying on anything in that</b></p> <p>21 <b>rule for your opinion that this was a firm</b></p> <p>22 <b>commitment offering?</b></p> <p>23 A. In the sense that I tried to convey</p> <p>24 here that these shelf takedowns were often on an</p> <p>25 expedited or rapid basis and so the exercise of the</p>

<p style="text-align: right;">Page 57</p> <p>1 underwriting often occurs very quickly. That's the 2 context I wished to set for this particular 3 transaction or my description of this transaction. 4 <b>Q. Are you aware that -- or is it -- is it</b> 5 <b>accurate to say that this is a cite under</b> 6 <b>Regulation C?</b> 7 A. Under Regulation C of what -- of what 8 rule? I'm not sure -- 9 <b>Q. Under the Securities Act?</b> 10 A. Regulation C? 11 <b>Q. Are you familiar with that?</b> 12 A. Not C standing alone, no. 13 <b>Q. Okay. And are you aware that this</b> 14 <b>prospectus was filed under Form F-10?</b> 15 A. The filing forms are -- are not 16 something I paid particular attention to but -- 17 <b>Q. Okay.</b> 18 A. -- whatever -- 19 <b>Q. Are you aware -- sorry.</b> 20 A. Whatever the file on Edgar shows. 21 <b>Q. Well, are you aware that Regulation C</b> 22 <b>does not apply to documents filed under Form F-10</b> 23 <b>so that this rule that you're citing doesn't</b> 24 <b>actually apply?</b> 25 A. No.</p>	<p style="text-align: right;">Page 59</p> <p>1 <b>MR. STODGHILL:</b> Okay. 2 <b>Q. I'm going to show you what was already</b> 3 <b>marked as 38. Did you review this document in</b> 4 <b>drafting your opinion?</b> 5 A. I believe this is the engagement letter 6 I reviewed, but I haven't -- I'd have to have both 7 documents in front of me to confirm that. But I 8 believe this is the same documents. 9 <b>Q. Okay. And you understand that this</b> 10 <b>engagement letter was signed in the afternoon of</b> 11 <b>November 9, 2009?</b> 12 A. Yes. 13 <b>Q. And is it your understanding that --</b> 14 <b>that this document -- in this document the parties</b> 15 <b>agree that the agreement does not represent an</b> 16 <b>offer or binding commitment by CIBC to purchase the</b> 17 <b>securities? And I'm looking at paragraph 13.</b> 18 <b>MR. STODGHILL:</b> Can I just have the question 19 back, please? 20 (The record is read back by the reporter.) 21 A. Yes. 22 <b>Q. Okay. And up until the signing of the</b> 23 <b>underwriting agreement, this was the only written</b> 24 <b>document in place between the parties with regard</b> 25 <b>to the November 2009 offering, right?</b></p>
<p style="text-align: right;">Page 58</p> <p>1 <b>Q. Okay. You saw that in -- that the</b> 2 <b>CIBC -- or strike that.</b> 3 <b>You saw that this offering was done as</b> 4 <b>an overnighted marketed offering?</b> 5 A. Yes. 6 <b>Q. Have you ever had any experience with</b> 7 <b>overnighted marketed offerings?</b> 8 A. Yes. 9 <b>Q. What is your experience?</b> 10 A. Only that we had from time to time done 11 such offerings, particularly in the medium-term 12 note markets, for example. 13 <b>Q. And -- but have you ever had any</b> 14 <b>experience with Canadian overnighted market</b> 15 <b>offerings?</b> 16 A. No. 17 <b>Q. Okay. And did you review the</b> 18 <b>engagement letter between CIBC and Central Fund in</b> 19 <b>this case?</b> 20 A. Yes. 21 <b>Q. So this is a binder of the premarked</b> 22 <b>exhibits or the marked exhibits.</b> 23 <b>MR. STODGHILL:</b> Are you going to show him the 24 engagement? 25 <b>MR. YOSKOWITZ:</b> I'm going to show him 38, yes.</p>	<p style="text-align: right;">Page 60</p> <p>1 A. In terms of formal legal documents, 2 yes, but there certainly were documents exchanged 3 by the parties, including e-mails, but this is the 4 formal document, yes. 5 <b>Q. This is the only legally binding</b> 6 <b>document between the parties until the underwriting</b> 7 <b>agreement was signed, right? Is that fair to say?</b> 8 A. Legally binding document, yes. 9 <b>Q. Okay. And did you review the testimony</b> 10 <b>of Stefan Spicer?</b> 11 A. I did. 12 <b>Q. And did you see his testimony that CIBC</b> 13 <b>was working on the best efforts basis until the</b> 14 <b>order book was closed?</b> 15 A. I did. 16 <b>Q. Did you take that into consideration in</b> 17 <b>your opinion?</b> 18 A. In the context of all the testimony, I 19 did, yes. Including testimony of either Mr. Scott 20 or Mr. Smith concerning Mr. Spicer's remarks. 21 <b>Q. Okay.</b> 22 <b>MR. YOSKOWITZ:</b> All right. We've been going a 23 little over an hour, why don't we take a break. 24 A. Sure. 25 <b>VIDEOTAPE OPERATOR:</b> This marks the end of DVD</p>

<p style="text-align: right;">Page 61</p> <p>1 No. 1 in the deposition of Mr. Guy F. Erb. We are 2 going off the record and the time is 10:43 a.m., 3 July 23, 2015. 4 (A brief recess was taken from 10:43 a.m. to 5 10:51 a.m.) 6 <b>VIDEOTAPE OPERATOR:</b> Back on the record. This 7 marks the beginning of DVD No. 2 in the deposition 8 of Guy F. Erb. The time is 10:51 a.m., July 23, 9 2015. 10 <b>Q. Mr. Erb, before the break we were</b> 11 <b>chatting about the engagement letter. I just want</b> 12 <b>to turn your attention to the afternoon of November</b> 13 <b>9th after the market, right. Engagement letter is</b> 14 <b>signed. At this point in time, right, the pricing</b> 15 <b>of the shares has not yet been determined, right?</b> 16 A. We're on November 9th? 17 <b>Q. Yes.</b> 18 A. That's correct. 19 <b>Q. And the size of the offering has not</b> 20 <b>been determined, right?</b> 21 A. That's correct. 22 <b>Q. And there's no commitment by CIBC to</b> 23 <b>purchase either a number of shares or an amount</b> 24 <b>of -- of -- of shares?</b> 25 A. Correct.</p>	<p style="text-align: right;">Page 63</p> <p>1 <b>this is going to be a firm commitment offering,</b> 2 <b>correct?</b> 3 A. Well, it refers to a proposed 4 underwritten offering by CIBC, so to my mind that's 5 an indication that this will be done on a firm 6 commitment basis. 7 <b>Q. Okay. And not to rehash our argument,</b> 8 <b>but -- but you said that there can be the use of</b> 9 <b>the word underwriting without reference -- without</b> 10 <b>meaning a firm commitment even if in your mind it's</b> 11 <b>incorrect, right?</b> 12 A. That's correct. 13 <b>Q. All right. Turn to D-10, the next</b> 14 <b>exhibit. And do you recognize Exhibit 10?</b> 15 A. Yes. 16 <b>Q. And what do you recognize Exhibit 10 to</b> 17 <b>be?</b> 18 A. This is a selling memorandum to members 19 of -- to broker-dealers in Canada. 20 <b>Q. And the purchase size of the offering</b> 21 <b>was fully dependent on the size of the orders that</b> 22 <b>CIBC was able to gather, right?</b> 23 A. Yes, mm-hmm. 24 <b>Q. Okay. And if you turn to the second</b> 25 <b>page of that document.</b></p>
<p style="text-align: right;">Page 62</p> <p>1 <b>Q. And they're certainly not at risk at</b> 2 <b>this point in time, correct? The underwriter?</b> 3 A. Only reputationally. If the deal 4 doesn't get done, there's a reputational risk, but 5 in terms of the actual risk of the transaction, not 6 yet. 7 <b>Q. And in fact, if they don't raise a</b> 8 <b>certain amount, they -- they can walk away and the</b> 9 <b>underwriter can walk away, right? There's no</b> 10 <b>commitment to any size -- size, right?</b> 11 A. They being the Central Fund, you mean? 12 <b>Q. Yes.</b> 13 A. That's correct. 14 <b>Q. So if you turn to Exhibit 9 in that</b> 15 <b>binder.</b> 16 A. In this binder? 17 <b>Q. Yeah. Do you recognize Exhibit 9?</b> 18 A. Yes. 19 <b>Q. And -- and Exhibit 9 is the press</b> 20 <b>release that went out after the close on November</b> 21 <b>9th announcing the proposed offering; is that fair?</b> 22 A. I think that's correct. I don't have 23 the time stamp on here, but it certainly was the 24 afternoon of November 9th, yes. 25 <b>Q. And there's nothing in here that says</b></p>	<p style="text-align: right;">Page 64</p> <p>1 A. Yes. 2 <b>Q. It says, Selling groups are now open,</b> 3 <b>you can reflect your firm interest; do you see</b> 4 <b>that?</b> 5 A. Selling group books are now open, yes. 6 <b>Q. Sorry. You can reflect your firm</b> 7 <b>interest; do you see that?</b> 8 A. Yes. 9 <b>Q. Firm interest means a firm bid; is that</b> 10 <b>right?</b> 11 A. Firm interest is not -- is an 12 indication that the buyer, in this case the clients 13 of these broker-dealers, is willing to buy a 14 certain number of shares, oftentimes they will set 15 a -- an indicative price range at which they would 16 like to see the transaction done. 17 <b>Q. Okay. But a firm offer in securities</b> 18 <b>language is actually if it's accepted, it is a</b> 19 <b>transaction, right?</b> 20 A. If it's accepted. 21 <b>Q. It's different than an indication of</b> 22 <b>interest, right?</b> 23 A. Both terms are used, but they're still 24 subject to the confirmation of the firm interest, 25 which will go out once the price has been set.</p>

<p style="text-align: right;">Page 65</p> <p>1 <b>Q. But the confirmation of the firm</b>  2 <b>interest in that regard is just -- Revelation, for</b>  3 <b>example, made a -- a firm bid based on a particular</b>  4 <b>premium and a size of 56 million, right? Is that</b>  5 <b>your understanding here?</b>  6 A. Roughly, yes. I -- the actual quantity  7 I think was roughly 56 million, yes.  8 <b>Q. So when -- and that was done prior to</b>  9 <b>the pricing call, right?</b>  10 A. Yes. That was done in the context of a  11 discussion he had with Mr. Smith, yes. E-mail  12 discussion he had with Mr. Smith.  13 <b>Q. So when CIBC after the pricing call</b>  14 <b>confirms with Revelation, Revelation is not free to</b>  15 <b>walk away from that, right?</b>  16 A. Well, technically they are free, but it  17 would have a serious reputational impact on any  18 buyer that walks away from its interest.  19 <b>Q. But it's different than an indication</b>  20 <b>of interest, right?</b>  21 A. As of this point he's saying I have the  22 price and I'm willing to purchase a certain number  23 of shares at that price.  24 <b>Q. But he -- but from Revelation's point</b>  25 <b>of view, they don't -- the number of shares is</b></p>	<p style="text-align: right;">Page 67</p> <p>1 the so-called green shoe, which expanded the  2 offering. So they were able to fill the orders and  3 then solicit more orders.  4 <b>Q. Well, they certainly didn't make --</b>  5 <b>they didn't get less shares than the orders that</b>  6 <b>they received, correct?</b>  7 A. That's correct. In this case.  8 <b>Q. Okay. And so there's no allocation</b>  9 <b>here saying you only get 60 percent of what you</b>  10 <b>ordered, right?</b>  11 A. I use the term allocation as when you  12 go back to the buyers and say you're in the deal  13 for this many shares, if it happens to be the same  14 number of shares you indicated you're interested  15 in, it's still an allocation in my mind.  16 <b>Q. Okay. Is there a difference in your</b>  17 <b>mind between an indication of interest and a firm</b>  18 <b>order?</b>  19 A. Yes.  20 <b>Q. Okay. And is what Revelation gave</b>  21 <b>prior to the pricing call a firm order?</b>  22 A. No.  23 <b>Q. And why do you say that?</b>  24 A. Because it didn't have a price attached  25 to it.</p>
<p style="text-align: right;">Page 66</p> <p>1 <b>irrelevant, correct? They made an offer based on a</b>  2 <b>premium and a size of 56 million, right?</b>  3 A. They stipulated the premium, that's  4 correct.  5 <b>Q. And so that was the order and the --</b>  6 <b>the confirmation after the pricing call is just a</b>  7 <b>confirmation of that transaction, correct?</b>  8 A. In this case. In cases -- other cases  9 the confirmation will come at a number or an  10 allocation less than the buyer wished to purchase.  11 <b>Q. Well, when you say in other cases, what</b>  12 <b>do you mean?</b>  13 A. In my experience when the book was  14 built, a book of orders was built, the equity desk  15 would then allocate shares and several of the  16 underwritings I'm aware of that I participated in,  17 even those that I had not been involved with  18 directly, the allocation differed from the  19 expression of interest.  20 <b>Q. But here CIBC is purchasing an amount</b>  21 <b>of shares equal to the firm orders it received from</b>  22 <b>clients, right?</b>  23 A. Not exactly, no.  24 <b>Q. Why do you say that?</b>  25 A. Because they then went on to exercise</p>	<p style="text-align: right;">Page 68</p> <p>1 <b>Q. But it had a premium and a size, all it</b>  2 <b>didn't have was a share price, right?</b>  3 A. Right. But he didn't know or any  4 bidder doesn't know what the premium will finally  5 be until after they price the deal.  6 <b>Q. But he said I will take 56 million at 5</b>  7 <b>and a half percent, right?</b>  8 A. No.  9 <b>Q. What did he say?</b>  10 A. He said at 5.  11 <b>Q. Okay. But that's in an e-mail. Did</b>  12 <b>you see the conversation?</b>  13 A. No. I have no record of that.  14 <b>Q. Okay. So if he -- if he said I will</b>  15 <b>take 56 million at 5 and a half percent and the</b>  16 <b>pricing comes in at 5 and a half percent, is</b>  17 <b>Revelation free to walk away?</b>  18 A. Technically they are. As I said, they  19 would have serious sequences.  20 <b>Q. You don't consider that a firm</b>  21 <b>transaction under the securities law, a binding</b>  22 <b>transaction?</b>  23 A. It's a commitment. The transaction  24 occurs a bit later when the tickets are written.  25 <b>Q. Okay. You understand that oral</b></p>



<p style="text-align: right;">Page 69</p> <p>1 transactions are binding over securities exchanges?</p> <p>2 A. I beg your pardon?</p> <p>3 Q. That you can have a binding oral</p> <p>4 transaction in the securities industry?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And it's confirmed later by a</p> <p>7 trade ticket, but the -- the transaction itself is</p> <p>8 that oral transaction, would you agree with me on</p> <p>9 that?</p> <p>10 A. An oral transaction?</p> <p>11 Q. Yes.</p> <p>12 A. The oral transaction that really counts</p> <p>13 in this case is when the underwriter goes back and</p> <p>14 says all right, we have a certain premium and the</p> <p>15 price is such and such, are you confirmed in that</p> <p>16 number and he says yes, that's -- that is a</p> <p>17 binding -- in the sense that if the buyer walks</p> <p>18 away, he would face serious consequences with</p> <p>19 regard to his reputation in the market.</p> <p>20 Q. What about a legal consequence? Could</p> <p>21 he be legally sued to confirm that transaction?</p> <p>22 A. I can't opine on questions of law.</p> <p>23 Q. Okay. And are you discounting</p> <p>24 Mr. Kuchanny's testimony that he thought he had</p> <p>25 reached a transaction prior to the pricing call?</p>	<p style="text-align: right;">Page 71</p> <p>1 CIBC take on the risk in this matter?</p> <p>2 A. 8:58 on the 10th.</p> <p>3 Q. And what happened at 8:58?</p> <p>4 A. That was the time they set the price.</p> <p>5 Q. Was that on the pricing call?</p> <p>6 A. That's the result of the pricing call,</p> <p>7 yes. The pricing call lasted 15 or 20 minutes.</p> <p>8 Q. And was that a -- was that in a written</p> <p>9 agreement at that time?</p> <p>10 A. No. That was -- that was the basis of</p> <p>11 the ensuing transactions that became the basis for</p> <p>12 the communication back to the buyers that the price</p> <p>13 had been set and the number of shares were now set.</p> <p>14 Q. So that was an orally binding</p> <p>15 transaction, you're saying, between CIBC and</p> <p>16 Central Fund?</p> <p>17 A. That was orally binding, yes.</p> <p>18 Q. Okay. But the ones right before that</p> <p>19 with the purchasers like Revelation were not orally</p> <p>20 binding?</p> <p>21 A. Until the price is set, you don't have</p> <p>22 a transaction.</p> <p>23 Q. Okay. And certainly you would agree</p> <p>24 with me that there was no written underwriting</p> <p>25 agreement in effect at that point, right?</p>
<p style="text-align: right;">Page 70</p> <p>1 A. No. I think that's common amongst</p> <p>2 traders.</p> <p>3 Q. Okay. That's the custom and practice</p> <p>4 that he reached a firm transaction?</p> <p>5 A. A trader will make every effort to</p> <p>6 stand behind his indication, that's correct.</p> <p>7 Q. So again, are you saying that what</p> <p>8 happened in this instance was an indication of</p> <p>9 interest, not a firm order?</p> <p>10 A. The first indication was -- the first</p> <p>11 exchange was an indication of interest and you can</p> <p>12 see that in the exchange of e-mails between</p> <p>13 Mr. Smith and Mr. Kuchanny. When the order is</p> <p>14 confirmed, when Mr. Smith goes back and says all</p> <p>15 right, now we have a price of 13.56 and</p> <p>16 Mr. Kuchanny then confirms that number, that's --</p> <p>17 that's the basis of the ticket. That's the --</p> <p>18 that's the really both sides are bound at that</p> <p>19 point.</p> <p>20 Q. Would you agree that trades can be</p> <p>21 priced off of other metrics other than price per</p> <p>22 share?</p> <p>23 A. In the question of this -- in terms of</p> <p>24 this offering, yes, it was.</p> <p>25 Q. And so when -- when did the -- when did</p>	<p style="text-align: right;">Page 72</p> <p>1 A. No written agreement, but the shares</p> <p>2 are underwritten at that point.</p> <p>3 Q. Okay. And the underwriting agreement</p> <p>4 came into effect actually after -- sometime after</p> <p>5 2:30 p.m. that day?</p> <p>6 A. The actual written documents, yes.</p> <p>7 Q. So the only binding written agreement</p> <p>8 between CIBC and Central Fund at 8:58 was the</p> <p>9 engagement letter, right?</p> <p>10 A. To the extent the e-mails communicating</p> <p>11 the price were written, I would say you have to</p> <p>12 take those into account, but if you're talking</p> <p>13 about a formal legal document, that's my</p> <p>14 understanding, yes.</p> <p>15 Q. And so CIBC had essentially engaged in</p> <p>16 a riskless principal transaction, right?</p> <p>17 A. No.</p> <p>18 Q. Why do you say that?</p> <p>19 A. There are two risks: One is that</p> <p>20 despite the negative consequences for the buyer,</p> <p>21 somebody could walk away from their transaction,</p> <p>22 the second risk is until the deal is closed and you</p> <p>23 actually have the funds from the buyers in hand and</p> <p>24 you've delivered the funds to the issuer, you're at</p> <p>25 risk of market risk that there might be a sudden</p>



<p style="text-align: right;">Page 73</p> <p>1 fall in the market that would leave you with a --</p> <p>2 unsold shares or a reflection of market risk, one</p> <p>3 of the buyers might go bankrupt. You have the</p> <p>4 market risk and buyer risk combined during those</p> <p>5 seven days.</p> <p>6 <b>Q. Market risk is inherent in any</b></p> <p>7 <b>securities transaction, correct?</b></p> <p>8 A. That's right.</p> <p>9 <b>Q. Okay. Whether it's best efforts or</b></p> <p>10 <b>firm commitment?</b></p> <p>11 A. No.</p> <p>12 <b>Q. Why do you say that?</b></p> <p>13 A. Well, once -- if, for example, you're</p> <p>14 in a best efforts offering and you have made a best</p> <p>15 efforts commitment to the issuer and you go to him</p> <p>16 on day one and say I believe we can -- we can</p> <p>17 arrange buyers of your shares up to a certain</p> <p>18 amount and the next day if the market has declined</p> <p>19 significantly and the buyers walk away, nobody's at</p> <p>20 risk there, but if the market crashed between the</p> <p>21 pricing and the closing, the underwriters would be</p> <p>22 forced to accept that risk and cover the</p> <p>23 transaction.</p> <p>24 <b>Q. Now, the first risk you're talking</b></p> <p>25 <b>about was whether or not buyers walked away. In</b></p>	<p style="text-align: right;">Page 75</p> <p>1 <b>Q. When -- when -- I'm looking where you</b></p> <p>2 <b>discuss the BP offering in your report. I see a</b></p> <p>3 <b>reference in 43.</b></p> <p>4 A. Pardon me?</p> <p>5 <b>Q. So the BP offering, British Petroleum,</b></p> <p>6 <b>that you're referring to I think starts in</b></p> <p>7 <b>paragraph 41 of your report; do you see that?</b></p> <p>8 A. Yes.</p> <p>9 <b>Q. Okay. And in that instance the</b></p> <p>10 <b>underwriters had agreed to guarantee a specific</b></p> <p>11 <b>price weeks before the date of the offering, right?</b></p> <p>12 A. Yes.</p> <p>13 <b>Q. Okay. And that's different than here</b></p> <p>14 <b>where it was an overnight marketed transaction,</b></p> <p>15 <b>right?</b></p> <p>16 A. Yes.</p> <p>17 <b>Q. You talked about -- you talk about --</b></p> <p>18 <b>in your report about book building?</b></p> <p>19 A. Yes.</p> <p>20 <b>Q. Is it accurate to say book building is</b></p> <p>21 <b>a market practice for almost all types of</b></p> <p>22 <b>offerings?</b></p> <p>23 A. No. I mean, in -- in the context that</p> <p>24 I use it, it's only in connection with the deals</p> <p>25 that were firm commitments or were underwritings</p>
<p style="text-align: right;">Page 74</p> <p>1 <b>your experience buyers don't walk away, right?</b></p> <p>2 A. Rarely.</p> <p>3 <b>Q. Okay. And you testified you're not</b></p> <p>4 <b>here to -- and you don't know what the legal</b></p> <p>5 <b>ramifications of that would be, right?</b></p> <p>6 A. That's correct.</p> <p>7 <b>Q. Okay. And -- and couldn't CIBC walk</b></p> <p>8 <b>away from its -- certainly between 8:50 a.m. and</b></p> <p>9 <b>2:30 when the underwriting agreement -- couldn't</b></p> <p>10 <b>CIBC walk away from its oral transaction with the</b></p> <p>11 <b>underwriter?</b></p> <p>12 A. It could, but there would be extremely</p> <p>13 serious consequences for CIBC, which any investment</p> <p>14 bank would take very seriously.</p> <p>15 <b>Q. Okay. But certainly if the market risk</b></p> <p>16 <b>was so inherent, CIBC might take that risk, right?</b></p> <p>17 A. In my experience the most graphic</p> <p>18 example of this was the BP offering, which I</p> <p>19 referred to in my report.</p> <p>20 <b>Q. Sure.</b></p> <p>21 A. When I joined Goldman this was very</p> <p>22 fresh in people's minds and they would frequently</p> <p>23 refer to the seriousness of the commitment they</p> <p>24 undertook in that offering and why they honored</p> <p>25 their commitment to buy the shares.</p>	<p style="text-align: right;">Page 76</p> <p>1 where the shares were purchased. Having no</p> <p>2 experience with best efforts deals, I don't know</p> <p>3 how they'd refer to it.</p> <p>4 <b>Q. Okay. So you don't know if there is --</b></p> <p>5 <b>based on your experience or lack of, you don't know</b></p> <p>6 <b>what book building is done in best efforts</b></p> <p>7 <b>offerings, right?</b></p> <p>8 A. I know that they contact investors</p> <p>9 seeking to confirm what they're interested in, but</p> <p>10 since they don't bear any responsibilities for</p> <p>11 those commitments, it's a different -- different</p> <p>12 situation.</p> <p>13 <b>Q. By the way, I -- just earlier you were</b></p> <p>14 <b>talking about your work and the work of other</b></p> <p>15 <b>people at BRG on this matter. Did you actually</b></p> <p>16 <b>review all the deposition transcripts or did other</b></p> <p>17 <b>people at BRG review the transcripts and tell you</b></p> <p>18 <b>what they said?</b></p> <p>19 A. I reviewed many of them myself as well</p> <p>20 as having other people look at them. I think -- I</p> <p>21 did not review every line of the depositions from</p> <p>22 CIBC Mellon.</p> <p>23 <b>Q. You did not?</b></p> <p>24 A. I -- I relied on a highlighted version.</p> <p>25 Somebody else read the whole document.</p>

<p style="text-align: right;">Page 77</p> <p>1 <b>Q. Did someone else highlight what they</b>  2 <b>thought was relevant and that's what you looked at?</b>  3 A. Yeah. And I made spot checks then  4 thereafter.  5 <b>Q. That was CIBC. What about Mr. Kuchanny</b>  6 <b>and Mr. Spicer?</b>  7 A. No, I read all those.  8 <b>Q. Is it accurate to say that during the</b>  9 <b>pricing call CIBC would not have gone out and</b>  10 <b>purchased all the gold and silver if it didn't have</b>  11 <b>the firm commitment orders from its clients?</b>  12 A. Well, the decision to purchase the gold  13 and silver was the Central Fund's. CIBC in that  14 case was the purchasing agent for orders that they  15 would have received from the Central Fund. So I  16 think they wouldn't have purchased any gold or  17 silver without an order from the Central Fund.  18 <b>Q. And the two of them together, Central</b>  19 <b>Fund and CIBC, wouldn't have made the amount of</b>  20 <b>purchases they did unless they had that same amount</b>  21 <b>from their firm orders from customers, right?</b>  22 A. That's correct. They -- they had a  23 good idea about the deal and what they could  24 purchase at the time they priced the deal.  25 <b>Q. They had more than a good idea, they</b></p>	<p style="text-align: right;">Page 79</p> <p>1 A. Not to the Canadian offering, but to  2 the sale of shares in the United States, yes.  3 <b>Q. Sale of shares?</b>  4 A. Purchase of shares.  5 <b>Q. Purchase of shares in the United</b>  6 <b>States?</b>  7 A. Right.  8 <b>Q. Sir, if you turn to Exhibit 19.</b>  9 A. In this book?  10 <b>Q. Yes. Sorry. And just a couple of</b>  11 <b>pages in, is that your understanding that's the</b>  12 <b>underwriting agreement as filed?</b>  13 A. Yes.  14 <b>Q. Okay. Is there anything -- does the</b>  15 <b>underwriting agreement specifically use the words</b>  16 <b>firm commitment?</b>  17 A. I don't recall.  18 <b>Q. And what in your mind, if anything, in</b>  19 <b>the underwriting agreement is the basis that this</b>  20 <b>was a firm commitment offering?</b>  21 A. On page 5 the -- of this document,  22 Exhibit 19, there's reference to purchase price,  23 which I believe is a reference to purchases by the  24 underwriters of the shares from the Central Fund.  25 <b>Q. So on page 5 it just says purchase</b></p>
<p style="text-align: right;">Page 78</p> <p>1 <b>purchased exactly what they got from their firm</b>  2 <b>orders, right?</b>  3 A. I don't recall if it was the exact  4 number. It was -- there -- I believe there were  5 some -- there was a difference between the actual  6 gold and silver prices, a minor difference between  7 that and the total issue.  8 <b>Q. On your report in paragraph 40 on 16 --</b>  9 A. Yes.  10 <b>Q. -- you cite a FINRA rule regarding</b>  11 <b>customer confirmations; do you see that?</b>  12 A. Yes.  13 <b>Q. And the former NASD rule. That</b>  14 <b>wouldn't apply to a Canadian offering, right?</b>  15 A. Well, not to shares sold in Canada. It  16 replies to shares sold in the United States.  17 <b>Q. In fact, all the materials that you</b>  18 <b>cite in here basically refer to U.S. regulations,</b>  19 <b>right?</b>  20 A. They do because the -- those are the  21 regulations that govern transactions run through  22 the New York Stock Exchange.  23 <b>Q. Okay. And you haven't considered</b>  24 <b>whether or not those rules actually apply to the</b>  25 <b>Canadian offering in this instance, have you?</b></p>	<p style="text-align: right;">Page 80</p> <p>1 <b>price has the meaning given to it above, right?</b>  2 A. Right. And we can look for other  3 points here. Well, I'd have to read the whole  4 thing to find where that is actually used, but I  5 think that is sufficient indication that the  6 underwriters were purchasing the shares.  7 <b>Q. Okay. So you -- you're just referring</b>  8 <b>to the fact that the underwriters are -- are</b>  9 <b>purchasing the shares as showing that this is a</b>  10 <b>firm commitment offering, right?</b>  11 A. That's what I'm relying on in answer to  12 this question, yes. Well, in the second paragraph  13 too, it's referring to the fact that the  14 underwriters hereby severally and not jointly or  15 jointly and severally offer to purchase from the  16 corporation the shares.  17 <b>MR. STODGHILL:</b> Can I just ask for the record,  18 when you say page 5, are you referring to the Bates  19 numbers or are you referring to the top numbers?  20 I'm trying to find where you are.  21 A. I was referring to the --  22 <b>MR. YOSKOWITZ:</b> I think it's referring to the  23 top number, Charles.  24 A. The top number. The Bates number is  25 0107.</p>

<p style="text-align: right;">Page 81</p> <p>1     <b>MR. STODGHILL:</b> Okay.</p> <p>2     A.   And the one I just quoted from is on</p> <p>3   0103.</p> <p>4     <b>MR. STODGHILL:</b> Okay. Thanks.</p> <p>5     <b>Q.   Okay. Anything else?</b></p> <p>6     A.   Well, not without reading every word of</p> <p>7   the document, right.</p> <p>8     <b>Q.   Going back to your expert report,</b></p> <p>9   <b>Mr. Erb, in 44, paragraph 44 on page 17.</b></p> <p>10    A.   I have it.</p> <p>11    <b>Q.   Okay. It says, To summarize, there are</b></p> <p>12 <b>two types of firm commitment underwritings: One in</b></p> <p>13 <b>which the price is set before the underwriters go</b></p> <p>14 <b>to market with the transaction and the other where</b></p> <p>15 <b>the deal is premarketed before the underwriters</b></p> <p>16 <b>purchase the shares; do you see that?</b></p> <p>17    A.   Yes.</p> <p>18    <b>Q.   Both have been described as bought</b></p> <p>19 <b>deals. And then you cite the Dictionary of</b></p> <p>20 <b>Financial Terms; do you see that?</b></p> <p>21    A.   Just as an example, yes -- so let me</p> <p>22   just mark this as the next exhibit. I think we're</p> <p>23   on 68.</p> <p>24       (Citation from the Dictionary of Financial</p> <p>25   Terms was marked Exhibit 68 for identification, as</p>	<p style="text-align: right;">Page 83</p> <p>1   <b>is because it's not in the cite for your statement</b></p> <p>2 <b>that a premarketed deal has been described as a</b></p> <p>3 <b>bought deal?</b></p> <p>4    A.   Well, just my own experience any deal</p> <p>5   that involves a purchase of the shares would be</p> <p>6   sometimes referred to as a bought deal. I just</p> <p>7   recall that terminology from my time in the</p> <p>8   industry.</p> <p>9    <b>Q.   Okay. So you're -- that citation is</b></p> <p>10 <b>not meant to talk about premarketed deals?</b></p> <p>11    A.   Which -- which citation?</p> <p>12    <b>Q.   To the Dictionary of Financial Terms.</b></p> <p>13    A.   Oh, I was referring to the fact that</p> <p>14   what's operational here or the point I would</p> <p>15   emphasize is that both these descriptions or</p> <p>16   definitions use the term outright purchase and</p> <p>17   that's the common element between a BP type</p> <p>18   transaction and the Central Fund type transaction</p> <p>19   that we're talking about here.</p> <p>20    <b>Q.   Did you see the -- in the CIBC</b></p> <p>21 <b>depositions that there is something in Canada</b></p> <p>22 <b>called a bought deal?</b></p> <p>23    A.   Yes, yes, uh-huh.</p> <p>24    <b>Q.   And that the Canadian witnesses all</b></p> <p>25 <b>said that this November 2009 transaction was not a</b></p>
<p style="text-align: right;">Page 82</p> <p>1   of this date.)</p> <p>2    <b>Q.   And I'll represent to you or at least</b></p> <p>3 <b>my colleagues will that this -- that this is the</b></p> <p>4 <b>portion of the dictionary of financial terms that</b></p> <p>5 <b>talk about bought deals and firm commitments, and</b></p> <p>6 <b>if you recognize it as that, that's great.</b></p> <p>7    A.   I do.</p> <p>8    <b>Q.   Okay. So you cite this and I -- I'm</b></p> <p>9 <b>just curious when it says bought deal in this</b></p> <p>10 <b>description it says bought deal in securities</b></p> <p>11 <b>underwriting, a firm commitment to purchase an</b></p> <p>12 <b>entire issue outright from the issuing company and</b></p> <p>13 <b>so it's equating a bought deal to a firm</b></p> <p>14 <b>commitment, right?</b></p> <p>15    A.   Yes.</p> <p>16    <b>Q.   Okay. And you talk -- and then on the</b></p> <p>17 <b>next page is the definition of firm commitment</b></p> <p>18 <b>and -- and it says or as they -- the last line says</b></p> <p>19 <b>as they sometimes call it bought deals and so you</b></p> <p>20 <b>have a reference in paragraph 44 to premarketed, in</b></p> <p>21 <b>quotes. There's no reference in either of those</b></p> <p>22 <b>definitions to premarketed deals, is there?</b></p> <p>23    A.   I don't think so. Let me look to check</p> <p>24   here. That is correct.</p> <p>25    <b>Q.   So I guess I'm wondering what the basis</b></p>	<p style="text-align: right;">Page 84</p> <p>1   <b>bought deal?</b></p> <p>2    A.   There are some terminology differences</p> <p>3   between the U.S. and the Canadian industry, but</p> <p>4   they're -- both are describing purchase deals.</p> <p>5    <b>Q.   All right. Can you just answer my</b></p> <p>6 <b>question? Is it -- is it accurate to say that the</b></p> <p>7 <b>Canadian witnesses said that this November 2009</b></p> <p>8 <b>transaction was not a bought deal?</b></p> <p>9    A.   Yes.</p> <p>10   <b>Q.   And that they equated a bought deal to</b></p> <p>11 <b>a firm commitment transaction?</b></p> <p>12    A.   They equated it to a firm commitment as</p> <p>13   expressed in the BP type transaction in my report,</p> <p>14   that's correct.</p> <p>15    <b>Q.   Okay. And they -- they said that the</b></p> <p>16 <b>November 2009 transaction was not a capital F,</b></p> <p>17 <b>capital C, Firm Commitment transaction, correct?</b></p> <p>18    A.   That, I don't recall. They did say it</p> <p>19   was an underwritten transaction.</p> <p>20    <b>Q.   Okay. But they said it wasn't a bought</b></p> <p>21 <b>deal and that it wasn't like the BP deal that you</b></p> <p>22 <b>describe in your report?</b></p> <p>23    A.   That's correct.</p> <p>24    <b>Q.   Could there be something that's neither</b></p> <p>25 <b>firm commitment nor best efforts?</b></p>

<p style="text-align: right;">Page 85</p> <p>1 A. Not that I'm aware of.</p> <p>2 <b>Q. Okay.</b></p> <p>3 A. Well, there is a standby commitment,</p> <p>4 that's true. There is the standby commitment as</p> <p>5 defined in this dictionary, but we're not talking</p> <p>6 about here.</p> <p>7 <b>Q. And that's because you're referring to</b></p> <p>8 <b>U.S. regulations where there's either a firm</b></p> <p>9 <b>commitment or a best efforts, right? In the U.S.</b></p> <p>10 <b>it's one or the other, right?</b></p> <p>11 A. Well, not just in the U.S. I mean,</p> <p>12 I've worked on -- nearly all the deals that I</p> <p>13 worked on involved other countries besides the U.S.</p> <p>14 and so I would say that it was commonly understood</p> <p>15 that whether we were marketing overnight or whether</p> <p>16 we had built a book over a longer period of time,</p> <p>17 there would be a purchase of shares at the end and</p> <p>18 therefore a firm commitment.</p> <p>19 <b>Q. In Canada the testimony is that there</b></p> <p>20 <b>is a bought deal, there's an agency deal, and</b></p> <p>21 <b>there's an overnight marketed transaction, right?</b></p> <p>22 A. The overnighted marketing transactions</p> <p>23 were as they said underwritten, all of them were</p> <p>24 underwritten.</p> <p>25 <b>Q. Okay. But there are three types,</b></p>	<p style="text-align: right;">Page 87</p> <p>1 remember -- recall using capital B, capital E, but</p> <p>2 I don't remember seeing capital F, capital C.</p> <p>3 <b>Q. Okay. So turn to 74, paragraph 74 of</b></p> <p>4 <b>your report.</b></p> <p>5 A. Yes.</p> <p>6 <b>Q. And -- and not to -- well, maybe I'm</b></p> <p>7 <b>beating a dead horse, but -- but when you -- you</b></p> <p>8 <b>say the deposition of David Scott, CIBC,</b></p> <p>9 <b>illustrates an underwriter's perspective on the two</b></p> <p>10 <b>ways of executing a firm commitment underwriting;</b></p> <p>11 <b>do you see that?</b></p> <p>12 A. Yes.</p> <p>13 <b>Q. He didn't actually say that these were</b></p> <p>14 <b>the two ways to execute a firm commitment offering,</b></p> <p>15 <b>right? He may have talked about underwritten</b></p> <p>16 <b>deals, right?</b></p> <p>17 A. Well, yes, we have to read that</p> <p>18 paragraph in conjunction with paragraph 75.</p> <p>19 <b>Q. Okay. But in -- in none of it does he</b></p> <p>20 <b>equate the overnight marketed offering to a firm</b></p> <p>21 <b>commitment underwriting, right? He never uses</b></p> <p>22 <b>those words?</b></p> <p>23 <b>MR. STODGHILL:</b> Well, those are two questions</p> <p>24 you want to --</p> <p>25 <b>MR. YOSKOWITZ:</b> Okay. He can answer either</p>
<p style="text-align: right;">Page 86</p> <p>1 <b>right?</b></p> <p>2 A. Well, the -- I would say that the</p> <p>3 overnight marketing deal is a type of firm</p> <p>4 commitment offering, yes.</p> <p>5 <b>Q. Well, is it a type of firm commitment</b></p> <p>6 <b>or is it a type of underwritten deal?</b></p> <p>7 A. They're synonymous.</p> <p>8 <b>Q. They're synonymous in your mind?</b></p> <p>9 A. Yes.</p> <p>10 <b>Q. But they're not synonymous in the</b></p> <p>11 <b>Canadian witness' mind, right?</b></p> <p>12 A. I don't know what's in their minds.</p> <p>13 <b>Q. But you saw their testimony that said</b></p> <p>14 <b>that was not a firm commitment deal, right?</b></p> <p>15 A. No.</p> <p>16 <b>MR. STODGHILL:</b> I object to that</p> <p>17 characterization of the testimony.</p> <p>18 A. No, I wouldn't agree with that.</p> <p>19 <b>Q. Okay. You saw their testimony that</b></p> <p>20 <b>they said this was not a bought deal, right?</b></p> <p>21 A. Yes.</p> <p>22 <b>Q. And that a bought deal in Canada is</b></p> <p>23 <b>equal to a Capital F, Capital C, Firm Commitment</b></p> <p>24 <b>transaction, right?</b></p> <p>25 A. I don't recall them using that -- I</p>	<p style="text-align: right;">Page 88</p> <p>1 one of them.</p> <p>2 A. Well --</p> <p>3 <b>Q. He never uses the word firm commitment</b></p> <p>4 <b>to reference the overnight marketed offering,</b></p> <p>5 <b>right?</b></p> <p>6 A. Not the term firm commitment, but if</p> <p>7 you look --</p> <p>8 <b>Q. Okay. You're -- sorry. I apologize.</b></p> <p>9 A. If you look at page 26.</p> <p>10 <b>Q. Yeah.</b></p> <p>11 A. The top of the page there, he's</p> <p>12 continuing the quotation I cite in page -- in</p> <p>13 paragraph 75.</p> <p>14 <b>Q. Sure. He says -- sorry, go ahead.</b></p> <p>15 A. Ultimately the deal itself is</p> <p>16 determined the next day, the next morning. At that</p> <p>17 stage it's underwritten and becomes a liability of</p> <p>18 the bank, and the important thing there is that --</p> <p>19 then -- taken in context he says the price of the</p> <p>20 offering and ultimately the deal itself is not</p> <p>21 known until the next morning and at that stage it's</p> <p>22 underwritten and becomes a liability of the bank</p> <p>23 that to my mind is a description of a firm</p> <p>24 commitment offering.</p> <p>25 <b>Q. Right. Once again you're equating firm</b></p>



<p style="text-align: right;">Page 89</p> <p>1 commitment with underwritten, right?</p> <p>2 A. And with purchase, yes.</p> <p>3 Q. And purchase. And they did not equate</p> <p>4 underwritten with firm commitment specifically in</p> <p>5 their testimony, right?</p> <p>6 A. Well, if we're talking about the term</p> <p>7 itself, yes, but they certainly meant to say that</p> <p>8 when they have the liability, that's the firm</p> <p>9 commitment and that's done --</p> <p>10 Q. Okay.</p> <p>11 A. -- at the moment of pricing.</p> <p>12 Q. Well, you're not opining on what they</p> <p>13 meant to say, right?</p> <p>14 A. No. Only on what they said.</p> <p>15 Q. Right. And they didn't say that,</p> <p>16 right?</p> <p>17 A. They didn't say what?</p> <p>18 Q. What you just opined they meant. They</p> <p>19 didn't say that this is a firm commitment offering?</p> <p>20 A. No. They said it's underwritten.</p> <p>21 Q. Okay. Thanks. Turn to paragraph 27 of</p> <p>22 your opinion, Mr. Erb. You say, It is generally</p> <p>23 the case that in follow-on offerings by closed-end</p> <p>24 funds the shares are priced at a discount to the</p> <p>25 market price and then you say, In the Central</p>	<p style="text-align: right;">Page 91</p> <p>1 work since you issued this report?</p> <p>2 A. Yes.</p> <p>3 Q. And what have you been asked to do?</p> <p>4 A. We reviewed the documents known as the</p> <p>5 CIBC production, which came in after I wrote the</p> <p>6 report.</p> <p>7 Q. When did the CIBC production come in?</p> <p>8 A. I don't recall the exact date.</p> <p>9 MR. STODGHILL: I think -- I think what he's</p> <p>10 referring to are the link that you -- the link that</p> <p>11 you sent to the documents that were Bates numbers</p> <p>12 by CIBC.</p> <p>13 MR. YOSKOWITZ: Okay.</p> <p>14 MR. STODGHILL: I think the e-mails may have</p> <p>15 been available to you in a different context</p> <p>16 earlier, but I think that's what he's referring to.</p> <p>17 MR. YOSKOWITZ: Sure, Okay.</p> <p>18 A. There is material in there that I had</p> <p>19 not seen before.</p> <p>20 Q. Okay. I assume it didn't change your</p> <p>21 opinion in any way?</p> <p>22 A. It didn't change the opinion. It</p> <p>23 clarified the timing of the transaction for me.</p> <p>24 Q. Okay. Have you looked at the expert</p> <p>25 reports issued by the defendants in this case?</p>
<p style="text-align: right;">Page 90</p> <p>1 Fund's offering the price of the share was set at a</p> <p>2 4.17 percent discount to the closing price on</p> <p>3 November 9th and at premium -- and at a premium of</p> <p>4 4.87 percent on November 9th, which was 12.90; do</p> <p>5 you see that?</p> <p>6 A. Yes, I do.</p> <p>7 Q. That's not actually how they set the</p> <p>8 price of the offering?</p> <p>9 A. That's correct. I -- I might have said</p> <p>10 the price of the share was set with the consequence</p> <p>11 that it represented a 4.17 discount rate.</p> <p>12 Q. Right. Because they just set it by the</p> <p>13 NAV of gold and silver in the landed price, right?</p> <p>14 A. That's correct.</p> <p>15 Q. Okay. The share price was irrelevant</p> <p>16 to that setting, right?</p> <p>17 A. I wouldn't say it was irrelevant, but</p> <p>18 it's certainly the basis for the pricing was the</p> <p>19 landed price of the mineral -- of the -- of the</p> <p>20 bullion, yes.</p> <p>21 Q. Do you have any other opinions that</p> <p>22 you're offering in this case that are not in this</p> <p>23 report?</p> <p>24 A. No.</p> <p>25 Q. Have you been asked to do any other</p>	<p style="text-align: right;">Page 92</p> <p>1 A. Yes.</p> <p>2 Q. Have you been asked to do any work with</p> <p>3 respect to those reports?</p> <p>4 A. No. Just to read them.</p> <p>5 Q. Okay. Have you come to any conclusions</p> <p>6 based on your review of those reports?</p> <p>7 A. Yes.</p> <p>8 Q. And what's your conclusion?</p> <p>9 A. I don't agree with them.</p> <p>10 Q. That's to be expected. But any</p> <p>11 specific thing that strikes you?</p> <p>12 A. Well, yes. The central point of</p> <p>13 Mr. Fleischman and Mr. Matthews. I did not really</p> <p>14 focus on Mr. Dumas' report.</p> <p>15 Q. Okay.</p> <p>16 A. But referring to those two by</p> <p>17 Mr. Fleischman and Mr. Matthews, I don't agree that</p> <p>18 the underwriting was done on a firm -- a best</p> <p>19 efforts basis.</p> <p>20 Q. Okay. Did -- Okay. Did you come to</p> <p>21 any more specific conclusions than that that --</p> <p>22 A. Well, there were several points at</p> <p>23 which I would disagree, but I could -- I'd have to</p> <p>24 look at the documents and indicate those to you.</p> <p>25 Q. Okay. So we talked about -- you just</p>

<p style="text-align: right;">Page 93</p> <p>1 talked about or you mentioned timing, so if you 2 could turn to paragraph 45 of your report. 3 A. Yes. 4 Q. And you talk about the exchange of 5 e-mails and then you say, Thereafter the 6 preparations -- and this is on the top of 18 now -- 7 A. Mm-hmm. 8 Q. -- for the offering conformed to the 9 standards of practices of the industry with regard 10 to the firm commitment shelf offering, that is the 11 filing of the registration statement, due 12 diligence, book building, signature of the 13 underwriting agreement, pricing, the execution of 14 trades and closing; do you see that? 15 A. Yes. 16 Q. You have the order wrong actually here, 17 right, because the pricing occurred before the 18 signature of the underwriting agreement, right? 19 A. That's correct, yes. That -- that's 20 one -- I miss -- misplaced the underwriting 21 agreement there. 22 Q. Okay. And execution of trades, by the 23 way, and closings happens in any underwriting 24 right, best efforts -- 25 A. I'm sorry, can you repeat that?</p>	<p style="text-align: right;">Page 95</p> <p>1 money. 2 Q. Okay. And -- and there are other types 3 of risk, there's stock bar risk and there are risks 4 in terms of hedging risks, right? 5 A. Yes. 6 Q. You cite -- in paragraph 30 on the next 7 page you cite an investment banking treatise, 8 Investment Banking: A Guide to Underwriting and 9 Advisory Services; do you see that? 10 A. Yes. 11 Q. Is that something that you relied on 12 while you were at Goldman or is that something that 13 the staff at BRG found for the purposes of this 14 engagement? 15 A. Well, this book was published in 2010, 16 so I couldn't have relied on the book in the 1990s, 17 but this is fully consistent with my understanding 18 that prevailed during the 1990s. 19 Q. Okay. And is there anything else in 20 that book other than what you cite in paragraph 30 21 that you found relevant? 22 A. Well, there may have been, but this was 23 I thought a pretty succinct and useful description 24 of what I was trying to say. 25 Q. Okay. And it's possible or probable</p>
<p style="text-align: right;">Page 94</p> <p>1 Q. Yeah, I'm sorry. Execution of trades 2 and closing happen in any underwriting, whether 3 it's firm commitment or best efforts, right? 4 A. Yes. 5 MR. YOSKOWITZ: All right. Why don't we take 6 a break so I can see where we are. 7 A. Okay. 8 VIDEOTAPE OPERATOR: We are now going off the 9 record at 11:39 a.m., July 23, 2015. 10 (A brief recess was taken from 11:39 a.m. to 11 11:53 a.m.) 12 VIDEOTAPE OPERATOR: We are now back on the 13 record at 11:53 a.m., July 23, 2015. 14 Q. Mr. Erb, I just have a few more 15 questions. Just turning back to your report on 16 page 10 and paragraph 28. 17 A. Yes. 18 Q. This is where you talk about the 19 virtually free trades -- risk-free trades? 20 A. Yes. 21 Q. Did you consider that the premium could 22 rise during that time causing losses by the people 23 that shorted the stock? 24 A. Well, if -- if the price increases 25 after you've made a short sale, yes, you would lose</p>	<p style="text-align: right;">Page 96</p> <p>1 that this book and this description is only 2 referring to U.S. offerings? 3 A. I don't know the answer to that 4 question. It's not limited to U.S. offerings and 5 it's by an international publisher, so I'd be 6 inclined to say it was not, but I don't recall that 7 particular feature of the book. 8 Q. And was there any description in there 9 about an overnighted marketed offering? 10 A. I don't recall. 11 Q. We talked a little bit before about how 12 the offering price here was calculated based on the 13 NAV, right? 14 A. Yes. 15 Q. So would you agree with me that any 16 short sales by Revelation or others right before 17 the offerings wouldn't have affected the offering 18 price? 19 A. That's correct. 20 Q. By the way, you're not -- I think I 21 asked this, but you're not here as an expert on 22 Rule 105, right? 23 A. That's correct. 24 Q. Okay. And you're not testifying or 25 giving any opinion as to the purpose of Rule 105,</p>



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1 right?

2 A. That's right.

3 Q. Earlier you mentioned -- and it's  
4 probably in the report somewhere, you mentioned  
5 about the green shoe option?

6 A. Yes.

7 Q. Can you just explain what that means?

8 A. Yes. Well, there actually was a green  
9 shoe company in the -- I believe it was even in the  
10 1920s, but I can't pin that down to an exact date.  
11 I learned by coincidence that this is now the  
12 Stride Rite Company.

13 Q. Oh.

14 A. So green shoe exists to this day. And  
15 I believe that was the first instance where a deal  
16 had been upsized following the pricing and sale of  
17 initial rounds of sales of shares.

18 Q. Did you have any experience in your  
19 underwritings at Goldman with green shoe options?

20 A. Yes. I think several of them were  
21 deals where the green shoe was exercised or the  
22 overallotment option exercised.

23 Q. Have you -- in any of them did the  
24 green shoe have a -- in any of those underwritings  
25 did green shoe have a one-day limit?

1 STATE OF NEW YORK )

2 ) ss.

3 COUNTY OF NEW YORK )

4

5 I hereby certify that the witness in the  
6 foregoing deposition, GUY F. ERB, was by me duly  
7 sworn to testify to the truth, the whole truth and  
8 nothing but the truth, in the within-entitled  
9 cause; that said deposition was taken at the time  
10 and place herein named; and that the deposition is  
11 a true record of the witness' testimony as reported  
12 by me, a duly certified shorthand reporter and a  
13 disinterested person, and was thereafter  
14 transcribed into typewriting by computer.

15 I further certify that I am not interested  
16 in the outcome of the said action, nor connected  
17 with nor related to any of the parties in said  
18 action, nor to their respective counsel.

19 IN WITNESS WHEREOF, I have hereunto set my  
20 hand this 4th day of August, 2015.

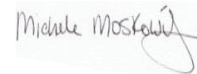
21 Reading and signing was:

22 \_\_\_\_\_ requested \_\_\_\_\_ waived \_\_\_\_\_ not requested

23

24

25 MICHELE MOSKOWITZ



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1 A. I don't recall.

2 Q. Is that in your mind unusual, that the  
3 green shoe in this underwriting had a one -- had a  
4 one-day limit?

5 A. I don't -- I didn't focus on that. I  
6 don't have an opinion on that.

7 Q. Okay. Sorry. One second. I have  
8 nothing else for you, Mr. Erb. Thank you for your  
9 time.

10 A. Thank you.

11 MR. STODGHILL: No questions.

12 VIDEOTAPE OPERATOR: This concludes the  
13 deposition of Mr. Guy F. Erb. The number of DVDs  
14 used was two. The original DVDs will be retained  
15 at Behmke Reporting and Video Services, Inc., 160  
16 Spear Street, Suite 300, San Francisco, California.  
17 Going off the record and the time is 12:01 p.m.,  
18 June 23, 2015.

19 (At 12:01 P.M., the deposition proceedings  
20 concluded.)

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GUY F. ERB